U.S. Department of Labor

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MAILED: 2/5/2001

In The Matter of:		
Richard Dorans	Case No.:	1999-LHC-2307
Claimant		
v.	OWCP No.:	1-145653
Electric Boat Corporation		
Employer/Self-insurer		

Appearances:

Steven C. Embry, Esq.
For the Claimant

Peter D. Quay, Esq.
For the Employer/Self-Insurer

Before: **DAVID W. DI NARDI**
Administrative Law Judge

DECISION AND ORDER - DENYING BENEFITS

This is a claim for workers' compensation benefits under the Longshore and Harbor Workers' Compensation Act as amended (33 U.S.C. §901, **et seq.**), herein referred to as the "Act." Hearings were held on December 2, 1999, December 10, 1999, January 18, 2000 and January 19, 2000, June 26, 2000 and June 27, 2000 in New London, Connecticut, at which time all parties were given the opportunity to present evidence and oral arguments. The following references will be used: TR for the official hearing transcript, ALJ EX for an exhibit offered by this Administrative Law Judge, CX for a Claimant's exhibit and RX for an exhibit offered by the Employer. This decision is being rendered after having given full consideration to the entire record.

Post-hearing evidence consists of the following[1]:

Exhibit Number	**Item**	**F i l i n g Date**
CX 18	Deposition Notice Relating to Walter A. Borden, M.D.	12/16/99
RX 39	Attorney Quay's letter filing the Employer's	12/20/99
RX 40	**Motion To Dismiss**, as well as	12/20/99
RX 41 12/20/99	Exhibits A-3 in support thereof	
CX 19 12/27/99	Deposition Notice Relating to Mark Braverman, M.D.	
RX 42	Attorney Quay's **Motion To Quash Deposition** of Dr. Braverman	12/27/99
CX 20	**Claimant's Response To Employer's Motion To Dismiss**	12/28/99
CX 21	**Claimant's Memorandum and Opposition To Motion To Quash Deposition**	01/03/00
CX 22 01/03/00	Anticipated Testimony of Dr. Braverman	
CX 23 01/05/00	December 21, 1999 report of Muriel Flanzbaum, ACSW, LICSW	
CX 24 01/13/00	Deposition Notice Relating to Dr. Braverman	

[1]Certain exhibits are being identified and admitted into evidence out of the usual chronological sequence as they were not available at the reconvened hearing on June 26, 2000.

ALJ EX 16 01/24/00	Notice of Reconvened Hearing	
CX 25	Attorney Embry's letter filing the January 4, 2000 report of Dr. Braverman, a report admitted into evidence at the January 18, 2000 hearing as ALJ EX 12	01/25/00
CX 26 01/29/00	Deposition Notice Relating to Muriel Flanzbaum	
CX 27	Attorney Embry's letter filing the	02/03/00
CX 28	January 11, 2000 Deposition Testimony of Dr. Borden	02/03/00
CX 29 02/04/00	Deposition Notice relating to Dr. Bernard Coppolelli	
CX 30 02/04/00	Notice Rescheduling the Deposition of Muriel Flanzbaum	
CX 31	Attorney Embry's letter filing the	02/07/00
CX 32	January 28, 2000 Deposition Testimony of Dr. Braverman	02/07/00
RX 43 02/07/00	Deposition Notice Relating to George L. Andrus, D.Ed.	
CX 33	Notice Rescheduling the Deposition of Dr. Coppolelli	02/14/00
RX 44	Attorney Quay's letter filing the	03/13/00
RX 45 03/13/00	March 3, 2000 Deposition Testimony of Dr. Andrus	
RX 46	Attorney Quay's letter requesting a rescheduling of the reconvened hearing due to the unavailability of his	03/14/00

	witnesses during the week of April 24, 2000	
ALJ EX 16 03/20/00	This Court's **ORDER** granting such request	
RX 47	Notice Relating to the Deposition of Michael Annunziata, M.D.	06/02/00
CX 35	Attorney Embry's letter filing the	06/12/00
CX 36	March 29, 2000 Deposition Testimony of Calvin Hopkins, as well as the	06/12/00
CX 37	March 29, 2000 Deposition Testimony of Muriel S. Flanzbaum	06/12/00
CX 38 08/07/00	Attorney Embry's letter suggesting a briefing schedule	
RX 48	Attorney Quay's letter filing	11/13/00
RX 49	Employer's brief	11/13/00
CX 39	Attorney Embry's letter filing	11/16/00
CX 40	Claimant's brief	11/16/00
CX 41	Attorney Fee Petition	11/16/00
RX 50 11/17/00	Attorney Quay's comments on the fee petition	
RX 51 12/20/00	Attorney Quay's letter filing the following documents. They are being identified herein for the benefit of reviewing authorities	
RX 52 12/20/00	December 13, 2000 article in **The New London Day** about	

	Claimant's criminal trial	
RX 53	State of Connecticut Penal Code, Section 53a-56	12/20/00
RX 54	Four (4) pages of Records from the Connecticut Superior Court relating to the trial	12/20/00
CX 42	Attorney Embry's objections to the admission of RX 52-RX 54 herein[2]	12/27/00

The record was closed on December 27, 2000 as no further documents were filed.

Stipulations and Issues

The parties stipulate, and I find:

1. The Act applies to this proceeding.

2. Claimant and the Employer were in an employee-employer relationship at the relevant times.

3. Claimant filed a timely claim for compensation and the Employer filed a timely notice of controversion.

4. The parties attended an informal conference on June 23, 1999.

5. The applicable average weekly wage is in dispute.

The unresolved issues in this proceeding are:

1. Whether or not Section 3(c) bars the claim.

2. Whether Claimant's alleged injury was caused by his maritime employment.

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[2]Claimant's objections to those proffered documents are sustained as those exhibits are irrelevant, immaterial and highly prejudicial to a claim filed under the Longshore Act. Those exhibits have played no part in this decision as the decision had already been drafted and processed and this Administrative Law Judge was waiting for completion of the Superior Court proceeding before issuance of this decision.

3. If so, the nature and extent of any disability.

Summary of the Evidence

Testimony of Richard Dorans

Mr. Richard Dorans ("Claimant" herein) is 43 years of age and stands 6' 2" tall and weighs 240 pounds. (TR 83) Claimant began working for Electric Boat Corporation on February 15, 1983, a shipyard facility on the navigable waters of the Thames River in Groton, Connecticut. (TR 84) Claimant received an Associates Degree from the New England Institute of Technology in Science and Electronics Technology in 1992. (TR 84) Following high school, Claimant went into the Navy for four years as a repair electrician. (TR 85) Claimant then worked for an engineering company in Rhode Island for two years before going to work for Electric Boat. (TR 85)

Claimant first worked as an outside electrician with Electric Boat. (TR 85) Claimant stated that when he first worked for Electric Boat there were approximately 8,000 employees; employment began to drop in 1996 or 1997. (TR 87) Claimant testified that he did not have any problems with fellow employees when he first started working at the shipyard. (TR 87) Claimant was appointed a union steward after the shipyard strike in 1988. (TR 88) As a steward, Claimant was responsible for policing the contract and assisting members of the union. (TR 88) Claimant stated that the strike went on for a couple of months, but was eventually broken when a significant number of employees crossed the picket line. (TR 89)

Several years after the strike there was a general layoff at the shipyard. (TR 90) Employees were chosen for layoff based on seniority, but Claimant was exempt from that procedure as he had so-called "super seniority" as a union steward. (TR 90) Claimant became involved in disputes between the younger employees who thought the more senior employees should step aside. (TR 91) Claimant also testified that there was a lot of resentment against the union following the last contract negotiations. As a steward he had to deal with disputes that arose on a daily basis. (TR 92-93) Claimant was working in radiological controls servicing the equipment used to monitor radiation in the shipyard. (TR 95) Claimant then had to take a "regression" as a result of the layoffs and went back to the installation and wiring of components in the submarines. (TR 95)

At that time, Claimant began to have problems with other employees in the shipyard. (TR 96) Claimant described an incident with an employee named John Rathbun who had been given

a layoff notice. (TR 96) Claimant stated that Mr. Rathbun would walk by him and form his thumb and forefinger into an "L" and point them at Claimant indicating "loser." (TR 96) Claimant confronted Mr. Rathbun about his actions at one point which led to a shouting match. (TR 97) Claimant testified that there was a supervisor in the area, Ray Marrone, who witnessed the verbal exchange, but did not do anything about it. (TR 97) Claimant reported this incident to Mr. Rathbun's supervisor. (TR 98) There were not any further confrontations, but Mr. Rathbun did continue to make the loser sign. (TR 98) Claimant then went to John Chaffee who was the department head to address the situation which also did not result in any action.(TR 98) Claimant then wrote up an internal reply message (IRM) which he described as an internal form used at Electric Boat which requires the recipient to take action within a specified period of time. (TR 99) Claimant gave the form to Frank Cordeiro who was an assistant supervisor. (TR 99) This resulted in a meeting with a representative of human resources, but not any disciplinary action against Mr. Rathbun. (TR 99) Claimant stated that his decision to file the IRM resulted in a lot of personal anguish because as a union steward, he was responsible for being an advocate on behalf of the employees. (TR 100) As a result of turning in Mr. Rathbun, the Claimant felt he was isolated by other union members. (TR 101)

Claimant testified that at roughly this same time he separated from his wife in November of 1995. (TR 103) Claimant described the separation as very difficult for both himself and his wife ultimately resulting in psychiatric treatment for his wife with a Dr. Andrus. (TR 104) Claimant coped by throwing himself into his work as a mechanic and as a union representative. (TR 104)

Claimant described numerous other problems at the shipyard relating to issues about employee's benefits, management bonuses, interchangeability of different trades and employees being removed from light duty in order to avoid layoffs. (TR 105-111) Claimant testified that as a union election approached, a group of employees presented a letter at a meeting signed by a number of employees to Mr. Alger, the business agent, requesting the removal of Claimant as a union steward. (TR 112-113) Claimant stated that the reason the employees wanted him removed was because of the "super seniority" issue. (TR 113) There were no changes made as a result of that meeting and Claimant continued as a union steward. (TR 114) Claimant testified that his status then became an issue in the union election. (TR 115) Claimant stated that employees would put up flyers calling him a scab and listing his home phone number; Claimant would tear down the posters and then the anonymous employees would actually laminate the posters to the walls. (TR 116) Claimant informed his supervisors of this activity,

specifically, Frank Cordeiro and Bob Bursell. (TR 116) As a result, Claimant received harassing telephone calls at home. (TR 117) Claimant stated that the posters came down after the election was over. (TR 118)

Claimant testified that after the election there was a reduction in the number of union stewards, but his status was not affected. (TR 119) Claimant was transferred to the second shift right before the election. (TR 120) He stated that he received the "cold shoulder" when he was first assigned, but people gradually loosened up. (TR 120) Claimant stated that the issue of "super seniority" was not resolved by the election and he still heard a lot of complaints about it after the election. (TR 121)

Claimant testified that his locker would often be vandalized by people painting it yellow or gumming up the lock. (TR 121) Claimant stated that management must have been aware of this activity because he would sometimes be late for work while he sorted out his locker. (TR 122)

Around this time, 1997 or 1998, Claimant volunteered for a project in Georgia because the company could not get enough workers to go there. (TR 123) This was at the same time his marital difficulties were coming to a head. (TR 123) Claimant felt that the problems at home and work were overwhelming, and he had difficulty sleeping. (TR 123)

Claimant then went to a job at the Portsmouth Naval Shipyard because the company again had difficulty getting enough workers to volunteer for that temporary duty. (TR 124) Claimant described an incident which occurred at Portsmouth where another electrician threatened to hit him with a two by four because of the "super seniority" issue. (TR 125) Claimant stated that he confronted this threat right away in order to keep it from escalating. (TR 126) Claimant stated that the "super seniority" issue came up a couple of times while in Portsmouth and that a supervisor, Willie Quintella, spoke to the individuals who brought it up. (TR 126)

While Claimant was in Portsmouth, he traveled back to Groton for union meetings and spoke daily on the phone with the unions and Metal Trades Council regarding various issues that would arise. (TR 127) Claimant returned to work at Groton from Portsmouth on November 30th. (TR 128) Claimant conducted union business and spoke to a number of employees who had received a golden handshake or early retirement. (TR 129) Claimant then reported to work on the second shift. (TR 129) Claimant told the supervisor, Ron Poole, that he would have to retrieve his tools from his car at the beginning of the shift and that he would have some union business to attend to during the shift.

(TR 130)

Claimant testified that prior to leaving for Portsmouth he used to work with John Cahoon and share tools. (TR 130) Claimant stated Mr. Cahoon was “a little different, a little aggressive,” although not towards him. (TR 130) Claimant stated that Mr. Cahoon uttered some nasty words when the shift began, asking Claimant what he was doing back at Groton. (TR 131) Claimant then described an incident later in the evening when he saw Mr. Cahoon and commented on his cap which indicated he was a veteran of the Korean war and Claimant was not aware of that. (TR 132) Claimant stated that Mr. Cahoon turned and, with his “eyes bulging”, said “that’s because you’re not a (expletive deleted) veteran.” (TR 132) Claimant then was assigned by Ron Poole to work with Mr. Cahoon, but did not do so because it was about an hour before lunch and he sensed there were still serious issues with Mr Cahoon. (TR 132-133) At lunch time the Claimant left to get a sandwich and then came back to the shop. (TR 133) Mr. Cahoon came into the shop at some point and resumed making comments to the Claimant. (TR 133)

Claimant stated that when he left the shop after the incident, he was in “shock.” (TR 133) Claimant sought psychiatric treatment with Dr. Andrus following the incident until his health insurance changed. (TR 133) Claimant then began and is still treating with Partners in Psychotherapy approximately every three weeks. (TR 134) Claimant is also treating with Dr. Borden. (TR 134)

Claimant began working for Com Tech doing electronic repair on January 25, 1999. (TR 135) He first worked as a temp. for $12 an hour and has now been hired full-time at $12.50 an hour. (TR 135) Claimant was working 40 hours a week at the time of his hearings, but had been working overtime previously. (TR 135)

Claimant said that he experiences panic attacks or anxiety attacks when he has to return to Groton. (TR 136) He stated that at one point he was unable to drive up Eastern Point Road, has trouble sleeping and dreams constantly of the shipyard. (TR 136) Claimant feels that the problems he is having now are related to all the difficulties he had at the shipyard over the past four or five years. (TR 137) He testified that he thought about leaving Electric Boat, but needed the job to support his wife and children. (TR 138) Claimant also stated that he had trouble sleeping prior to the incident with Mr. Cahoon. (TR 139)

On cross examination Claimant testified that criminal charges for manslaughter and assault were brought against him as

a result of the incident[3]. (TR 141) Claimant also stated that he thinks he would have been laid off in 1998 if he was not a steward although he conceded it could have been October of 1997. (TR 142) Claimant stated that the individual who threatened him in Portsmouth was David Gentry, but he did not report the incident to management. (TR 145-146) Claimant described another incident with David Gentry and Jay Icoi at Portsmouth that devolved into a shouting match which was witnessed by a supervisor, Willie Quintella. (TR 147)

Claimant also stated that he filed an IRM regarding Mr. Rathbun because he felt he did not get any results from his previous complaints. (TR 150) He did not have any problems with Mr. Rathbun after the IRM and was very satisfied with the results of the intervention. (TR 151) The incident with Mr. Rathbun occurred in September of 1997 and the poster incidents began in January of 1998 until the election in July. (TR 152) Claimant caught Bill Taranova and Ken Billington putting flyers up, but he does not know who else was responsible. (TR 153) Claimant stated that he did not report those two employees because he did not want to point fingers. (TR 156) Claimant never went to the ombudsman or the Equal Employment Opportunity counselor or the ethics program director or the employee assistance program about this incident. (TR 157-158) Claimant never discovered who made the harassing phone calls to his house. (TR 159)

Claimant stated that prior to November of 1998 he was losing time from work. (TR 168) He is not sure how much time, but he thinks he used up all of his vacation and sick days and twelve weeks of family and medical leave. (TR 168) Prior to November 30, 1998, Claimant saw a therapist for a couple of visits when his divorce started and again when his wife had her own problems. (TR 169) Claimant does not remember the first therapist his former wife saw, but stated that when he went the second time it was to see Dr. Andrus. (TR 170) Claimant believes that he discussed his problems at work. (TR 172) Claimant believes he mentioned his problems at work to his primary care physician, Dr. Coppolelli. (TR 173)

Claimant was initially made a steward by the business agent at the time, Mr DeCosta, and then remained in that position through several elections. (TR 174) Claimant stated that he

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[3] In view of those still pending charges, Claimant pleaded the Fifth Amendment of the U.S. Constitution with reference to any questions about the incident itself. This Court, accepting such plea, ruled, in effect, that Claimant, by answering other questions, did not waive his Fifth Amendment privilege.

would sometimes have to spend his whole day on union business. (TR 175) Claimant testified that he did not feel he should resign his position as a union steward and accept a layoff because he served at the discretion of the business manager. (TR 181) Claimant is not aware of any other time at Electric Boat where "super seniority" was actually applied to avoid a layoff. (TR 184) Claimant stated that because of his position he did not feel it was right to report the various incidents of harassment unless his personal safety was at stake, as was the case with Mr. Rathbun. (TR 188)

Claimant does not know if he refused to go the yard hospital following the assault of November 30, 1998. (TR 189) Claimant saw Dr. Andrus the day following the incident. (TR 195) Claimant was prescribed a tranquilizer by his primary care physician as Dr. Andrus, a Ph.D., could not write prescriptions. (TR 197) Claimant stayed on tranquilizers until he got his new job in January of 1999. (TR 198) Claimant stated that he told Dr. Borden that he had no memory of striking Mr. Cahoon and that his last memory is of Mr. Cahoon approaching him in a threatening manner. (TR 204)

Claimant stated that when he arrived at work on November 30, 1998 he told Mr. Poole that he had to move some tools in from his car and then take care of union business. (TR 207) Mr. Cahoon first said some nasty words to the Claimant as the crew was gathering for the usual "muster" before the shift. (TR 208) Claimant was aware that Mr. Cahoon would tend to have changes in personality because of medication. (TR 211) The Claimant became aggravated by the comments made by Mr. Cahoon in the lunch room and also by the fact that the supervisor did nothing to stop it. (TR 212) Claimant felt physically threatened by Mr. Cahoon and stated that he (Mr. Cahoon) had assaulted other employees in the past. (TR 213) Claimant does not remember if Mr. Cahoon actually struck him or struck at him. (TR 215)

Testimony of Dorothy Santos

Dorothy Santos testified at the hearing. She met Mr. Dorans through their church group. (TR 231) Ms. Santos testified that the Claimant would often talk about the stress from his job. (TR 232) This resulted in the Claimant becoming depressed and not wanting to go to work. (TR 232)

Testimony of Richard McCombs

Mr. Richard McCombs testified at the reconvened hearing on January 18, 2000. (TR 285) Mr. McCombs has worked for Electric Boat for 32 years and he is an officer in the Executive Board of

Local 261 of the IBEW and Chairman of the Safety Committee for the Metal Trades Council. (TR 285) He described the fallout from the 1988 strike as bitter because the union did not do well. (TR 286) He also said that layoffs began to hit his department in 1991 or 1992. (TR 286) Mr. McCombs stated that sixty to eighty-five percent of the total workforce had been laid off. (TR 287) Mr. McCombs said that employee morale was very low following the layoffs because the general sense was that the union was being asked to make sacrifices, but not upper management or the stockholders. (TR 289) Job jurisdiction was also altered in 1991 or 1992 so that different trades were allowed to do more than one kind of work. Mr. McCombs said that this affected morale as well since a worker would have to do the job of someone who had just been laid-off. (TR 290) Mr. McCombs was aware that from 1991 to 1997, younger workers would harass older workers to give up their seniority rights and leave the company. (TR 291) There were also problems because older workers would have to give up light duty jobs due to lack of work. (TR 291) Workers began to blame the union for problems since they had to give up some concessions they had earned in earlier contracts. (TR 293)

Mr. McCombs explained that there is one steward for every fifty union members. (TR 294) Mr. McCombs did not recall "super-seniority" becoming an issue until this last downsizing. (TR 295) "Super-seniority" became an issue because there was concern that the department would be reduced from 500 to 50 and of the remaining 50, 20 would be stewards because of "super-seniority." (TR 296) Mr. McCombs stated that "super-seniority" became an issue vis a vis the Claimant almost as soon as he entered OSC. (TR 297) Mr. McCombs saw flyers that criticized Claimant and referred to him as a "scab steward." (TR 298) Mr. McCombs was also told by others that the Claimant's locker was vandalized by being glued shut. (TR 299) Mr. McCombs was present at the hearing regarding the incident involving the Claimant and Mr. Rathbun. Mr. McCombs testified that that incident also led to enmity for Claimant because the workers did not think a union steward should report a fellow worker to management. (TR 300) Mr. McCombs said that following the election, the issue of "super-seniority" died down somewhat. (TR 302)

Mr. McCombs also testified that workplace violence was an issue because of all the downsizing. (TR 306) The safety committee brought in Mark Braverman of Crisis Management Inc. to come in and discuss the situation. (TR 307) Mr. McCombs said that the company was at first open to the various suggestions, but then lost interest. (TR 308)

On cross examination, Mr. McCombs testified that the Metal Trades Council is an umbrella organization made up of the nine

different unions representing the hourly workers at Electric Boat. (TR 313) Mr. McCombs has known Claimant since 1989 or 1990 when he became active with the local. (TR 316) Mr. McCombs generally only saw him in relation to union business. (TR 317) Mr. McCombs described the Claimant as an excellent steward who performed his job in a professional manner. (TR 319) He also stated that he never had any problems with him. (TR 319) Mr. McCombs was present at a union meeting where an individual named Robert Leonard presented a letter regarding Claimant's use of "super-seniority." (TR 321) Mr. McCombs was also aware of a letter, in evidence as RX 28, presented by Mark Basler which called for Claimant's removal. (TR 322) Mr. McCombs agreed that the stewards face heightened pressure during times of layoff as they are on the front lines dealing with the union members. (TR 325) Mr. McCombs is not aware of any other stewards who had physical confrontations with other members. (TR 326) Mr. McCombs described the posting of flyers as part of the campaign process. (TR 329) Mr. McCombs testified that he spent 40 hours a week on Safety Committee business, but would do electrical work on weekends as overtime. (TR 337) Mr. McCombs stated that another union steward exercised his "super-seniority" rights for three months, but otherwise Claimant was the only steward to exercise those rights. (TR 339) Mr. McCombs thought there was a need to exercise "super-seniority" in the case of Claimant, but he may have removed him if he were union president to avoid the flack. (TR 341) Mr. McCombs testified that there was a sub-committee of the Safety Committee regarding workplace violence which consisted of himself, Wayne Peccini, Kevin Cassidy and Cheryl Strugio from Human Resources. (TR 343) Mr. McCombs felt that there was more pressure on the union officers in the last two or three years because of the layoffs. (TR 346) Mr. McCombs brought a flyer with him from the shipyard that was identified as CX-16 known as the SCUM (Seriously Concerned Union Members) report. (TR 351)

Testimony of Percipient Witnesses

Edward Wilson

Mr. Edward Wilson testified at the hearing on January 19, 2000. (TR 369) Mr. Wilson is a first class electronic mechanic with Electric Boat. (TR 370) Mr. Wilson was working the second shift on November 30, 1998. (TR 370) Mr. Wilson estimated that Mr. Cahoon was 5'4" or 5'5" and weighed around 180 to 190 pounds. (TR 371) Mr. Wilson knew of Claimant and described him as taller and heavier than Mr. Cahoon. (TR 372) Mr. Wilson ate lunch in the shop that day between 8:00 p.m. and 8:20 p.m. (TR 373) Mr. Wilson stated that Claimant was sitting by his locker speaking with him, Mr. Poole and Bob Perkins. Mr. Cahoon then came into the shop and stood by the area of the lockers. (TR

373) Claimant and Mr. Cahoon began speaking with each other as Mr. Wilson became engaged in a conversation with Mr. Perkins and Mr. Poole. (TR 374) Mr. Wilson became aware of the conversation between Cahoon and Claimant when he heard Claimant say in a raised voice, "you don't think I can, do you." (TR 374) Mr. Dorans then got out of his chair and struck Mr. Cahoon. (TR 374) Mr. Wilson did not see Mr. Cahoon act in a threatening manner towards Mr. Dorans or make any moves towards him. (TR 375) Mr. Dorans struck Mr. Cahoon twice at which point he dropped to the floor. Mr. Dorans then stood over him with his arm cocked as if he were going to strike him a third time when Mr. Poole interceded. (TR 375) Mr. Wilson then went to the tool crib to call an ambulance as instructed by Mr. Poole. (TR 376) Mr. Wilson marked an exhibit entered in the record as RX 29A with an "X" to indicate his location, a "D" to indicate Claimant's location and a "C" for Mr. Cahoon at the time Mr. Dorans got out of his chair and struck Mr. Cahoon. (TR 381) Mr. Wilson also placed an "X" to indicate the location where Mr. Dorans struck Mr. Cahoon. (TR 381) Mr. Wilson described the incident not as a fight, but as an attack. (TR 382) Mr. Wilson stated that prior to the attack, Mr. Cahoon walked past Mr. Dorans towards the hallway and then returned to the place marked on RX 29A. (TR 384) Mr. Wilson stated the attack came without warning. (TR 385) Mr. Wilson did not think Mr. Dorans held back at all when he struck Mr. Cahoon. (TR 388) Mr. Wilson stated that the person sitting in the photograph, which was entered as RX 30, was in the same location as Mr. Dorans. (TR 389) Mr. Wilson stated that Mr. Cahoon was standing by the lockers in the upper right hand portion of RX 30. (TR 390) Mr. Cahoon was bleeding from the nose and mouth after he was struck. (TR 391) He did not hit a locker or anything else on the way down. (TR 391)

Mr. Wilson has never heard anyone talk about Mr. Cahoon throwing a tool bag across the shop. TR 393) Mr. Wilson thinks he would have heard about such an incident even though he was only on the second shift for several weeks. (TR 394) Mr. Wilson also never heard of Mr. Cahoon throwing a pry bar at Chris Stewart. (TR 395)

On cross examination, Mr. Wilson said that because of his hearing aids, he did not hear all of the conversation between Mr. Cahoon and Claimant. (TR 397) Mr. Wilson was sitting in the area of the incident for his entire lunch period, about a half an hour. (TR 397) Claimant appeared to be in a good mood. (TR 397)

Mr. Wilson said that there was a loss of morale and dissatisfaction amongst the workforce following the 1988 strike and subsequent contract negotiations. (TR 397-400) Mr. Cahoon initially entered the lunch room from the stairs which were

marked with a “JC1" on RX 29A. (TR 405) Mr. Wilson does not know if Mr. Cahoon said anything to Mr. Dorans when he (Mr. Cahoon) initially walked past him. (TR 406) Mr. Wilson does not know if Mr. Cahoon said anything to Mr. Dorans when he (Mr. Cahoon) re-entered the room from the hallway. (TR 407) Mr. Cahoon then stood by the lockers and was listening to the conversation at the table. (TR 408) Mr. Wilson is not aware if he said anything at that point. (TR 408) Mr. Wilson testified there was no indication that Mr. Dorans was angry before he raised his voice. (TR 409) Mr. Cahoon was about ten feet from Mr. Dorans when he was listening to the conversation at the table. (TR 410) Mr. Wilson met with the legal department at Electric Boat for about a half hour before his testimony. (TR 412) Attorney Quay, Mr. Peachey and Mr. Wilson were present at the meeting. (TR 413) On redirect, Mr. Wilson stated that he never saw Mr. Cahoon standing over Mr. Dorans. (TR 414)

Lyn Tyrone

Mr. Lyn Tyrone testified at the hearing on January 19, 2000. (TR 418) Mr. Tyrone is currently a nuclear electrical inspector, but on November 30, 1998 he was an outside electrician. (TR 419) Mr. Tyrone worked the second shift that day and had done so for approximately a year and a half. (TR 420) Mr. Tyrone had worked with Mr. Cahoon a couple of times, but not often. (TR 420) He described Mr. Cahoon as roughly 5'9", shorter and much lighter than Mr. Dorans. (TR 421) Mr. Tyrone did not see any indication of a dispute between Claimant and Mr. Cahoon when they gathered at the beginning of their shift to receive work assignments. (TR 421)

Mr. Tyrone was in the shop immediately after eating his lunch. (TR 422) Mr. Tyrone authenticated RX 29B as an accurate representation of the shop area. (TR 423) He placed a “D” and a “C” on the exhibit to indicate the location of Mr. Dorans and Mr. Cahoon. (TR 423) Mr. Tyrone did not notice that Mr. Dorans and Mr. Cahoon were speaking to each other. (TR 424) Mr. Tyrone did not notice anything until he saw Mr. Dorans strike Mr. Cahoon two times with Mr. Cahoon dropping to the floor after the second punch. (TR 424) Mr. Tyrone was engaged in other conversations at the time so he did not really notice if Mr. Cahoon made any comments to Mr. Dorans. (TR 425) Mr. Tyrone testified that it looked as if Mr. Dorans was going to strike Mr. Cahoon a third time when Mr. Poole intervened. (TR 426) Mr. Tyrone placed a “C2" on the exhibit to indicate Mr. Cahoon’s location when Mr. Dorans got out of the chair. (TR 428) After the incident, Mr. Tyrone heard Mr. Dorans say something akin to, “I hope that taught you a lesson, old man.” (TR 428) Mr. Tyrone characterized the incident not as a fight, but as an attack. (TR 428) Mr. Tyrone did not see Mr. Cahoon approach Mr. Dorans in a threatening manner. It appeared to Mr. Tyrone as if he

were walking past him. (TR 429) The incident came as a surprise to Mr. Tyrone and lasted only a couple of seconds. (TR 430) Mr. Cahoon did not have an opportunity to fight back. (TR 431) Mr. Tyrone described the punches as hard and fast; he characterized the first one as a "sucker punch" and described the second one as coming down from above as Mr. Cahoon was on one knee at that point. (TR 432)

Mr. Tyrone had never seen Mr. Cahoon "get in someone's face." (TR 431) Mr. Tyrone had never heard about Mr. Cahoon throwing a tool bag across the shop. (TR 433) He also never heard of Mr. Cahoon throwing a pry bar at Chris Stewart. (TR 433)

Mr. Tyrone identified the table in the lower left hand corner of RX 32 as the table at which he was sitting when the incident took place. (TR 434) Mr. Tyrone was sitting in approximately the location of the chair with casters on the left side of the table as seen in RX 32. (TR 435) Mr. Tyrone stated that the individual in RX 32 was sitting in approximately the same location as Mr. Dorans and that Mr. Cahoon was between the lockers. (TR 436) Mr. Tyrone saw blood coming from Mr. Cahoon's nose after he was struck where it looked like his glasses had been jammed into his nose. (TR 436) On cross examination, Mr. Tyrone marked RX 29B with a "D2" to indicate where Mr. Dorans was located when he stood up from his chair. (TR 439) Mr. Tyrone estimated that Mr. Cahoon and Mr. Dorans were approximately three or four feet apart. (TR 440) Mr. Tyrone said that the back of Claimant's chair was against a locker. (TR 443)

Mr. Tyrone was not aware that Claimant's locker was locked shut or painted. (TR 444) He did see some posters in the area which made reference to Mr. Dorans. (TR 444) Mr. Tyrone does not recall telling the investigating police a few days after the incident that Mr. Dorans made a comment immediately afterwards that, "he is not going to take it anymore," but concedes that he could have said it. (TR 445) Mr. Tyrone was aware of discontent with the issue of "super seniority" and that some of that was directed at the Claimant. (TR 446)

Michael Zaccaria

Mr. Michael Zaccaria testified at the hearing on January 19, 2000. (TR 449) Mr. Zaccaria is an electrician and he worked the second shift on November 30, 1998. (TR 450) He had only worked on the second shift for a week or so. (TR 450) Mr. Zaccaria did not notice any tension between Mr. Cahoon and Mr. Dorans at the beginning of the shift. (TR 450) Mr. Zaccaria ate lunch in the shop and saw Mr. Cahoon and Mr. Dorans there on November 30, 1998. (TR 450) Mr. Zaccaria authenticated RX 29C as an accurate

representation of the shop and placed a “Z” on the diagram to indicate his location. (TR 452) He indicated Claimant’s and Mr. Cahoon’s location immediately prior to the incident with a “D” and a “C”, respectively. (TR 453) Mr. Zaccaria heard Mr. Cahoon say something to Mr. Dorans that, “he basically had no reason to say anything about somebody else.” (TR 453) Mr. Dorans then said something such as, “you don’t think I’m going to hit you” and then striking Mr. Cahoon. (TR 453) Mr. Dorans struck Mr. Cahoon twice. (TR 453) Mr. Cahoon was on the ground when he was struck the second time. (TR 454) Mr. Zaccaria did not hear any shouting before the incident, he did not see Mr. Cahoon threatening Mr. Dorans and he did not see him walking towards Mr. Dorans. (TR 454) Afterwards, Mr. Dorans said something to Mr. Cahoon about “he hoped he taught him a lesson,” but he does not remember the exact phraseology. (TR 454) Mr. Zaccaria testified that the individual depicted in the photograph entered as RX 33 is in approximately the same location as was Mr. Dorans. (TR 455) Mr. Zaccaria stated that he was eating lunch between the two sets of lockers depicted in RX 34 and that Mr. Cahoon was at the end of that same row. (TR 456) Mr. Zaccaria did not describe the incident as a fight. (TR 457) He also stated that he did not see Mr. Cahoon approach Mr. Dorans, he did not see Mr. Cahoon get in Claimant’s face nor did he hear him make any verbal threats. (TR 457) Mr. Zaccaria stated that the incident occurred in the “snap of a finger.” (TR 457) Mr. Zaccaria did not see the first punch because it happened so quickly. (TR 458) He stated that it looked like Mr. Cahoon was going down when the second blow was delivered. (TR 458) Mr. Zaccaria stated that it may have looked like Mr. Dorans was going to hit him a third time. (TR 458) Mr. Zaccaria stated that Mr. Poole did not have to pull Mr. Dorans away from Mr. Cahoon. (TR 459) Mr. Cahoon was bleeding after incident. (TR 460) Prior to this incident, Mr. Zaccaria had not observed any friction between Mr. Cahoon and Mr. Dorans. (TR 461)

On cross examination, Mr. Zaccaria stated that he did not see how Mr. Cahoon initially entered the shop area, but he did see him walk past Mr. Dorans, go out into the hallway and then come back. (TR 462) Mr. Cahoon was only gone for a couple of seconds. (TR 463) Mr. Zaccaria indicated Claimant’s location when he got out of the chair with a “D2" on RX 29C. (TR 464) Mr. Zaccaria does not recall telling a police officer a few days after the incident that he did not see the assault because he was facing away from Mr. Dorans and Mr. Cahoon. (TR 465) Mr. Zaccaria was aware there was an argument between Mr. Dorans and Mr. Cahoon and he just wanted to stay away from it. (TR 469) Mr. Zaccaria thinks that perhaps the police officer added or deleted something from his statement. (TR 471) This Administrative Law Judge questioned Mr. Zaccaria who testified that he was sitting in a chair between the lockers facing towards the tool crib at an oblique angle. (TR 474)

Robert Wayne Perkins

Mr. Robert Wayne Perkins testified at the hearing on January 18, 2000. (TR 482) Mr. Perkins has been an electrician with Electric Boat for twenty-one years. (TR 483) Mr. Perkins worked the second shift on November 30, 1998. (TR 484) He had been on the second shift for about one week. (TR 484) Mr. Perkins discussed an outstanding bill from a chiropractor with Mr. Dorans. (TR 485) He seemed to be in good spirits. (TR 485) Mr. Perkins did not see any indication of a dispute between Mr. Cahoon and Mr. Dorans when the shift began. (TR 485) Mr. Perkins ate lunch in the shop and authenticated RX 29D as an accurate representation of the shop where the workers ate lunch. (TR 486) Mr. Perkins marked the exhibit with a "P", "D", "C", "PO" and "W" to indicate his location and the location of Mr. Dorans, Mr. Cahoon, Mr. Poole and Mr. Wilson, respectively. (TR 487) Mr. Perkins was having a conversation with Mr. Dorans as lunch was ending regarding the aforementioned chiropractor's bill. (TR 488) Mr. Cahoon came into the shop and stood by the lockers for 10 to 15 minutes before starting to go out to the hallway. (TR 488) Mr. Cahoon then returned to his previous location. (TR 489) When he walked past Mr. Dorans, Mr. Cahoon made a comment about "hiding behind the button." (TR 489) Mr. Dorans said a few words back such as, "You don't think I'll hit you?" and then jumped up and struck Mr. Cahoon. (TR 490) Mr. Dorans struck Mr. Cahoon with a left and a right which dropped him to the floor. (TR 490) Mr. Dorans said something to the effect of "I hope you learned a lesson tonight" to Mr. Cahoon as he was laying on the ground. (TR 491) Mr. Dorans then told Mr. Poole that he was tired of people messing with him. (TR 492) Mr. Cahoon was not moving towards Mr. Dorans when Mr. Dorans got out of his chair. (TR 492) Mr. Cahoon was leaning with one hand against the lockers. (TR 492) Mr. Perkins described the incident as an attack "like a kamikaze." (TR 495) Mr. Perkins did not hear Mr. Cahoon shout anything or get in Claimant's face. (TR 495) Mr. Perkins compared the sound of the blows to that of a baseball bat striking a watermelon. (TR 496) Mr. Cahoon was bleeding from the bridge of his nose afterwards.(TR 497) Mr. Perkins described Mr. Dorans as taller, heavier and much younger than Mr. Cahoon. (TR 498)

On cross examination, Mr. Perkins stated that where he was seated he could touch Mr. Cahoon, but was about five or six feet away from Mr. Dorans. (TR 500) Mr. Cahoon came back into the shop when he heard someone say something about "hiding behind the button." (TR 501) That comment was made in relation to an individual named Ray Marrone. (TR 502) When Mr. Cahoon heard that, he turned around, re-entered the shop and made a similar comment to Mr. Dorans. (TR 502) Mr. Perkins described Mr. Dorans as (expletive deleted) because of the conversation about Ray Marrone. (TR 503) Mr. Perkins had heard from someone in

the shop that Mr. Dorans and Mr. Cahoon previously had words regarding “super seniority.” (TR 504) Mr. Perkins stated that Mr. Dorans did a professional job as a steward. (TR 505) The conversation about Mr. Marrone revolved around the fact that he had been elevated to a management position, but then reverted back to his union rights. (TR 506)

Robert Leonard

Mr. Robert Leonard testified at the hearing on January 19, 2000. (TR 511) Mr. Leonard is an outside electrician and has worked for Electric Boat for 27 years. (TR 512) Mr. Leonard worked second shift on November 30, 1998. (TR 513) Mr. Leonard stated that he knew Mr. Cahoon and had had arguments with him over the years. (TR 513) Mr. Leonard stated that Mr. Cahoon was not an "in your face" kind of person, but he did speak his mind. (TR 513)

Mr. Leonard went to the cafeteria at the beginning of the lunch period and then arrived at the shop as lunch neared its end. (TR 515) Mr. Leonard saw Mr. Dorans when he entered the shop, but not Mr. Cahoon. (TR 516) Mr. Leonard agreed that RX 29E was an accurate representation of the shop and placed an "L", a "D" and a "C" to indicate the location of himself, Mr. Dorans and Mr. Cahoon, respectively. (TR 516) Mr. Leonard first saw Mr. Cahoon when he was walking out towards the hallway and indicated the path of his travel with several arrows on the exhibit. (TR 517) Mr. Leonard heard that there was some conversation going on about Ray Marrone. (TR 519) Mr. Leonard then heard Mr. Cahoon make a comment to Mr. Dorans although he could not hear the actual words used. (TR 519) Mr Leonard believes that Mr. Cahoon made a comment to the effect that Mr. Dorans had no place criticizing Ray Marrone. (TR 520) Mr. Leonard stated that his view was obstructed, but he saw Mr. Dorans rise from his chair and hit Mr. Cahoon with a left and then a right. (TR 520) Mr. Leonard never saw Mr. Cahoon get in Claimant's face. (TR 521) Mr. Leonard said that he has never seen Mr. Cahoon get loud. (TR 521) Mr. Leonard testified that the incident happened very quickly and that no one had time to react. (TR 522) Mr. Leonard never observed any friction between the Claimant and Mr. Cahoon prior to this incident. (TR 522) Mr. Leonard never heard of Mr. Cahoon throwing a tool bag across the shop or throwing a pry bar at Chris Stewart. (TR 523) Mr. Leonard read a letter at a union meeting concerning the issue of "super seniority." (TR 524) Mr. Leonard testified that he tried to avoid Mr. Dorans when they were on the same shift. (TR 525)

On cross examination, Mr. Leonard testified that he did not see Mr. Cahoon initially enter the shop. (TR 526) However, he does not think he was standing around for ten or fifteen minutes, he thinks "he just wandered in and wandered out." (TR 526) Mr. Leonard stated that no one prevented Mr. Cahoon from leaving the shop. (TR 529) Mr. Leonard stated that when Mr. Cahoon returned, he stood away from Mr. Dorans. (TR 529) Mr. Leonard described the incident as spontaneous and was over very quickly. (TR 530) Mr. Leonard stated that the issue of "super seniority" was a big issue in March around the election. (TR 531) Mr. Leonard testified that there were posters around the

shop during the election. (TR 532) On redirect examination, Mr. Leonard said that he never harassed Mr. Dorans about his "super seniority" status and did not observe others harassing him. (TR 534)

Ronald Poole

Mr. Ronald Poole testified at the hearing on January 19, 2000. (TR 537) Mr. Poole was the supervisor on the second shift on November 30, 1998. (TR 538) Mr. Poole had worked with Mr. Cahoon and described him as mellow, but gruff at times. (TR 539) Mr. Poole knew Mr. Cahoon for 30 years and did not find him to be an in your face type person. (TR 539) Mr. Poole described Claimant as a forceful person who would usually get in someone's face. (TR 540)

Mr. Poole was not aware of any problems between the Claimant and Mr. Dorans at the beginning of the shift and was not aware of any previous problems. (TR 541) Mr. Dorans and Mr. Cahoon were assigned to work together that day. (TR 541) Mr. Dorans did not go to the boat because he said that he wanted to get his tools out of his car and take care of some union business. (TR 541) Mr. Poole placed an "X" on RX 29F to indicate where Mr. Dorans exited the building to retrieve his tools. (TR 542) Mr. Poole stated that Mr. Cahoon always wore a hat which indicated he was a veteran of the Korean War. (TR 543) Mr. Poole went onto the boat before the lunch time to the area where he assigned Mr. Cahoon and Mr. Dorans to work; he saw Mr. Dorans standing in a doorway and Mr. Cahoon inside the room. (TR 543) He did not notice any tension between them. (TR 543) Mr. Poole eats his lunch in his office, but came to the shop to muster the workers at the end of the lunch period to give them their work assignments. (TR 544) When Mr. Poole entered the shop and sat at the table, Mr. Cahoon was standing by the lockers. (TR 545) Mr. Poole testified that the conversation at the table was about how Ray Marrone was made a working leader. (TR 545) Mr. Poole then spoke to Mr. Wilson about a job assignment. (TR 546) He then heard Mr. Dorans "holler shut your (expletive deleted) mouth before I shut it." (TR 546) Mr. Dorans was yelling at Mr. Cahoon. (TR 546) Mr. Poole testified that he did not see Mr. Cahoon act in a threatening manner. (TR 547) Mr. Dorans then "jumped and hit John Cahoon with a left," Mr. Cahoon then went down on one knee and Mr. Dorans hit him again with his right hand. (TR 547) Mr. Poole then got between them because it looked like Mr. Dorans was going to hit him again. (TR 547) Mr. Cahoon's glasses were shattered. (TR 547) Mr. Poole stated that he was sitting in the chair without arms opposite the individual depicted in RX 34. (TR 548) Mr. Cahoon was standing between the lockers depicted in RX 34. (TR 549) Mr. Poole characterized that first punch as a "sucker punch." (TR 550)

Mr. Poole never saw Mr. Cahoon act in a threatening manner or yell at Mr. Dorans. (TR 550) Mr. Poole testified that after he intervened, Mr. Dorans was angry and appeared to know what he was doing. (TR 552) Mr. Poole then yelled for someone to call an ambulance and Mr. Cahoon said he wanted to speak with the police. (TR 553) Mr. Poole then encountered Bob Urbani, the area superintendent, who took Mr. Dorans outside. (TR 554) Mr. Poole never heard of Mr. Cahoon throwing a tool bag or throwing a pry bar at Chris Stewart. (TR 555)

On cross examination, Mr. Poole testified that Mr. Cahoon was required to wear a hard hat at work, but that he always wore a baseball hat to work. (TR 556) Mr. Poole had heard rumors that Mr. Perkins had spent three years in jail for blowing up a police car. (TR 557) Mr. Poole does not remember Mr. Cahoon coming through the door or down the stairs. (TR 558) He was also not aware of Mr. Cahoon walking past Mr. Dorans at any time. (TR 559) Mr. Poole testified that Mr. Cahoon may have taken a step towards the door or towards Mr. Dorans. (TR 562) Mr. Poole did not hear Mr. Cahoon make any comment to Mr. Dorans relating to the conversation about Ray Marrone. (TR 563) On redirect, Mr. Poole stated that when Mr. Cahoon took the step he put his hard hat back on and looked like he was going back to work . (TR 565) Mr. Poole stated that Mr. Cahoon's hard hat was knocked off with the first punch. (TR 570)

Mr. Poole, who gave additional testimony at the reconvened hearing on June 27, 2000, testified that he has worked at the shipyard for thirty years, the last twenty-five as a supervisor, that he supervised Claimant for about four weeks, that he would see Claimant on a daily basis because both worked in the same building and that he saw Claimant's interaction with his co-workers. He described Claimant as being "very aggressive" towards salaried workers and always seemed to be on the offensive, no matter what the issue. As an example, he cited the Employer's policy of permitting smoking within twenty-five (25) feet of an open door. Claimant, adamantly opposed to smoking, would often challenge workers he believed to be violating that policy. According to Mr. Poole, "It was either Richard's way or no way." Shortly after Claimant returned to work in Dept. 241, he came to Mr. Poole and told him to keep John Rathbun away from him. Mr. Poole talked to Mr. ??? and he told Mr. Poole that Claimant and Mr. Rathbun had had an argument about "super seniority." Shortly after the shipyard strike ended in September of 1988, a worker who had crossed the picket line allegedly was told by the Claimant that "he would get him." Mr. Poole asked Claimant about that alleged statement and Claimant denied making that statement. (TR 7-15)

Mr. Poole supervised Decedent for five months and he had no problems with him. Moreover, he assigned Claimant and Decedent

to work together in the radio room and they got along fine, working together with no problems and joking. According to Mr. Poole, the presence of flyers is quite common during union elections and they are usually posted throughout the shipyard. Claimant identified only Mr. Rathbun to Mr. Poole as an individual harassing him. (TR 15-23)

William Salisbury, who has worked at the shipyard as an outside electrician for thirty-two (32) years, testified that he reported for work on November 30, 1998 at about 3:45 p.m., that he went to the electrical shop for the usual "muster" and to receive his work assignment, that he saw Claimant and Decedent at the "muster" and that he observed no problems at that time. He then went to his work site, returning for his lunch, regularly scheduled from 8:00 P.M. to 8:20 P.M. for the second shift workers. Mr. Salisbury went to the shop to have his lunch and he noticed Claimant and Decedent were also there. On the pertinent diagram (RX 29g) he made the appropriate works to show where he was seated, as well as the positions of Claimant and Decedent. He was talking to Bob Leonard and "heard the noise of banging lockers" and saw Ron Poole, the foreman, jump up and say something. He (Mr. Salisbury) jumped up and saw Decedent on the floor with Claimant standing or hovering over Decedent with a clenched right fist. At first Mr. Salisbury did not realize what had happened, believing that Decedent had just fainted or passed out. Decedent then "rolled over" and Mr. Salisbury saw blood. David Wright, who was over near the lockers, asked the Claimant "why did you do that?" Someone told Mr. Wright to go back to where he had been, apparently out of fear that the incident would then escalate. (TR 9-15)

Claimant returned to his seat in the shop and Mr. Poole, from a phone in the "cage" in the shop, called for Security Personnel to come to the shop. Claimant then went over in the direction of the cage and the lockers and told the Decedent, "I hope you learned a lesson. I hope you learned something." According to Mr. Salisbury, Claimant then went back towards the door and went outside of the shop and "we waited for the EMTs and Security" to arrive at the shop. (TR 15-22)

Mr. Salisbury recounted an episode between Claimant and Mark Bassler wherein Mr. Bassler asked a question about a contract that had recently gone into effect. According to Mr. Salisbury, Claimant was "very loud" in his responses and "acted in not a nice way." Mr. Bassler then wrote a letter to the union complaining about the conduct of Claimant, and Mr. Salisbury signed that letter as a witness to the event. Other workers also signed that letter, a document in evidence as RX 28. Mr. Salisbury, who did not actually see the incident between Claimant and the Decedent, also testified that he once asked Claimant a question about insurance coverage and "he apparently was not in a good mood that day," Mr. Salisbury testifying that

other workers had similar problems with the Claimant and that he could not recall that Claimant's "super seniority status" presented an issue during the 1998 IBEW election at the shipyard. (TR 22-30)

Reginald John Hunter, who has worked at the shipyard as an outside electrician for almost twenty-seven (27) years, testified that he was assigned to work on September 8, 1998 at the Portsmouth Naval Shipyard, that Norman Laroche was the Employer's management liaison person at that shipyard as 40-50 employees of the Employer were assigned to help out with the work there, that a verbal confrontation occurred during the week long orientation session between Claimant and Dave Gentry, that both were rather loud but no blows were struck. Mr. Hunter saw no reason to report the incident and there were no further problems between them. Mr. Hunter, who was seated three chairs away from Claimant and Mr. Gentry, was not aware of what triggered Claimant's threatening statements to Mr. Gentry. Mr. Hunter did not hear any talk between them about the "super seniority" issue. (TR 31-36)

Norman Laroche, who has worked for the Employer for thirty six years, is still on TDY at Portsmouth and he has been there for about eighteen (18) months on split tours; eight months on the first tour and nine months thus far on his second tour. According to Mr. Laroche, the 40-50 employees on TDY at Portsmouth stay at the same hotel and he tries to see each of the workers in the course of the work day. He recounted an argument between Claimant and Jay Iacoi about the use of an automobile because he smoked. Mr. Laroche separated them and advised that it did not look right for "EB people" to be arguing at Portsmouth. Shortly thereafter Claimant complained to Mr. Laroche about a "soft tire" in his car. Mr. Laroche observed no one harassing Claimant and Claimant did not tell him about any employment-related stress, although he did tell him that he was in the process of getting divorced and needed some time off. That was the only stress Claimant mentioned to him and Claimant never told him that he was being harassed because of his super seniority status. In fact, Mr. Laroche did not know that Claimant was a union steward "for the first few months" and he was not aware that Mr. Gentry(?) had called Claimant a "scab." (TR 37-47)

John A. Rathbun, who has worked as a electronics mechanic for twenty years, testified that he had a "verbal conflict" with Claimant on September 22, 1997, at which time claimant was transferred back into the electronics department. Mr. Rathbun "was upset with" Claimant because Claimant's status as a union steward granted him super seniority status and permitted him to remain at work while other workers, with more seniority than the Claimant, were being laid-off. On September 22, 1997 Mr.

Rathbun came into the shop, saw Claimant, who at that time was in the tool crib, and called him “a scab steward.” Claimant came out of the crib and asked, “Do you have a problem with that?” Mr. Rathbun responded, “Yes, I do.” While neither “threatened” nor touched the other, they were about one foot apart, yelling at each other, and some one came between them and separated them. (TR 48-57)

Claimant reported that incident by means of the official company form called an IRM, dated September 23, 1997. (CX 8) A meeting was promptly called and John Chafee, the Employer’s superintendent, counseled Mr. Rathbun and he was told that if he continued to harass Claimant, that he (Mr. Rathbun) would be fired. He and Claimant had no further problems and he believes that he and Claimant did work together on one occasion prior to his layoff. Mr. Rathbun was upset over the “super seniority” status and others had the same feelings. (**Id.**)

Frederick L. La Fountaine, who has worked as an electrical foreman since May of 1976, as a supervisor since February of 1984 and who presently is on TDY in Bangor, Washington directing “EB” workers at a Trident sub base there, has worked as a supervisor at the Groton, Connecticut shipyard. He testified that Claimant worked for him from September of 1997 to April of 1998 when Claimant was transferred back into Dept. 241, that the November 30, 1998 incident occurred in the main shop of the department and that the “muster” takes place in that shop because the lockers are there, a coffee pot is also there and there are chairs and tables to have their lunch. Mr. La Fountaine, who described Claimant as “an opinionated person” and as “an aggressive person,” testified that Claimant had reported to him that someone had tampered with his locker in the South Yard Shop, that he (Mr. La Fountain) “elevated” that complaint to his general foreman and the latter person “elevated” the complaint to the Employer’s Security Department, in accordance with company policy. Security determined that someone had tampered with and damaged the lock, and the Employer replaced the lock. (TR 58-73)

One day Mr. La Fountaine entered the shop area and he saw Claimant and Mr. Rathbun “in a discussion” and, according to Mr. La Fountain, “We had a meeting in IRD (Industrial Relations Department) with the President of the union local in the A-70 shop,” along with others from the Human Resource Department (HR). Claimant raised an issue of harassment by Mr. Rathbun and the meeting was called to deal with that complaint. Mr. La Fountaine was present at the meeting because he was Claimant’s immediate supervisor at that time. Mr. Rathbun was told that he would be fired if he continued to harass the Claimant and Mr. La Fountaine told Steve Alger, the union president, that “he had a internal union issue” and that “he should resolve it as we are

trying to build submarines." Mr. Alger acknowledged the existence of that problem. There were no further problems between Claimant and Mr. Rathbun. (**Id.**)

Mr. La Fountaine testified that there was an IBEW election in the spring and summer of 1998, that the usual "flyers" and "counter-flyers" are posted at various places at the shipyard, that the use of such flyers is quite common and typical during elections among the nine shipyard unions, that other workers have had their lockers sabotaged and that the Employer replaces the locks as need, that Claimant has identified no other harasser other than Mr. Rathbun and that the flyers and counter-flyers are posted anonymously, especially as some are quite derogatory. He denied telling Mr. Alger to take away Claimant's "super seniority status" but he did tell him that he should deal with that problem. (**Id.**)

Christopher G. Stewart, who has worked at the shipyard for nineteen years, the last twelve years as a supervisor, testified that he supervised Claimant from April to September of 1998, that Clamant's personality could best be described as "very strong" and "very aggressive," and that he is "an in-your-face kind of guy," and is sort of a "buttinsky," one who is not popular with his co-workers. According to Mr. Stewart, Claimant reported no harassment to him and he observed no harassment of the Claimant. He supervised Decedent off/on for seven years and he had no problems with him. When asked whether Decedent had thrown a crow bar at him, Mr. Stewart replied, "Absolutely not." He has observed flyers posted around the shipyard and, in the summer of 1998, at the height of the popularity of the movie, **TITANIC**, he recalled one flyer which depicted the **TITANIC** sinking with Mr. Alger, Claimant and the other union officials on the deck of the sinking ship. According to Mr. Stewart, the flyers from the opposition group "usually sling mud," just like any other campaign, and the flyers from the incumbent groups "are usually toned down." Mr. Stewart admitted that super seniority and layoffs were issues in that union election and that layoffs and cutbacks at the shipyard did cause concerns for all employees, both hourly and salaried workers. (TR 73-84)

William H. Hobbes, who has worked at the shipyard for thirty-nine years, the last twenty-eight as a supervisor, testified that he supervised Claimant's work on three occasions after September of 1997, that Claimant did not report to him, and he did not observe, any alleged harassment at the shipyard, that he observed Claimant working at the shipyard every six weeks or so and that he also had the opportunity to observe Claimant's interaction with his co-workers. According to Mr. Hobbs, Claimant's personality "is annoyingly aggressive" but this did not affect his supervision of the Claimant. He did recall the time that Claimant and Decedent worked for him on a

task at the nearby U.S. Navy Sub Base and they worked well together and manifested no animosity or friction. A union steward need not be "annoyingly aggressive" in order to be effective in promoting the employees' interests. When asked to elaborate upon "annoyingly aggressive," Mr. Hobbs testified that Claimant, once he had an issue on his mind, "would keep pestering" him to talk at that time rather than waiting until later when he (Mr. Hobbs) had some free time. (TR 84-92)

Frank Vincent Cordeiro, IV, who has worked twenty-three years at the shipyard, the last eighteen as a supervisor, and who currently works as an area superintendent, testified that he worked with Claimant in the past before he became a supervisor, that he had occasion to see Claimant daily in the shop and that Claimant had a "caustic" and "abrasive" personality. Claimant handed to Mr. Cordeiro his complaint dated September 23, 1997 (CX 8) and, after reading it, he called Fran Norris at IRD and asked for direction from that department. A meeting took place at which time Claimant complained that he was being harassed by John Rathbun, and the latter was told to cease and desist or he would be fired. No discipline was meted out, both parties were satisfied with the way it had been handled and "we concluded that Claimant and Mr. Rathbun could work together." Mr. Cordeiro observed no other harassment of the Claimant and he reported no such harassment to Mr. Cordeiro. (TR 93-104)

Claimant did come to him with one of the election flyers and he referred Claimant to Brian Shields, the foreman in the electrical department. Mr. Cordeiro sees those election flyers all the time because that is the method used by the parties to put out their positions on various issues. According to Mr. Cordeiro, Claimant did not identify those who posted the flyers and while the posters did not name the Claimant, it was obvious that Claimant was being targeted, according to Mr. Cordeiro. Super seniority was an issue at the shipyard and some stewards "turned in their (union) buttons" and were laid-off when their number came up on the layoff list. Claimant, however, would not follow their lead, thereby retaining his job and avoiding layoff. No one else brought to his attention any election posters deemed to be personally offensive. (**Id.**)

Marie Wagner, who has worked at the shipyard since January 23, 1979 and who presently serves as the EEO/Affirmative Action Officer, testified that her duties involve, **inter alia,** handling the full range of EEO complaints investigating them, administering discipline, counseling the employees, etc., as well as dealing with state and federal agencies on external complaints, that harassment is prohibited at the shipyard, that notices to that effect are mailed to all employees (RX 24, RX 25, RX 26), that Claimant would have received those notices and that such notices are also posted on bulletin boards throughout

the shipyard. Ms. Wagner reviewed her files and found no complaints by Claimant about any alleged harassment at the shipyard. (TR 105-117)

Brian G. Shields, who has worked for the Employer for eighteen years and who presently works as a manufacturing representative at the Employer's Quonset Point Facility, North Kingstown, Rhode Island, testified that in 1997 and 1998 he was working at the Groton shipyard as Area Manager for the Seawolf Program, that Claimant was in his chain of command, that he would see Claimant three-to-four times weekly as he "transitioned" through the electrical shop area and that he probably spoke to Claimant on several occasions when he would be talking to those who were supervising Claimant. According to Mr. Shields, those flyers and posters are quite common during a union election and are posted throughout the shipyard. On two occasions Claimant brought to Mr. Shields a poster which he felt to be personally offensive to him. Mr. Shields called the Security Department to verify where they were and the posters were then taken down. He recalled one flyer containing a large eye against a black background and the words "WE ARE WATCHING YOU." Mr. Shields could not recall a flyer containing Claimant's home phone number but he believed that there is a posting of union stewards and their phone numbers. Claimant told Mr. Shields that the posters were being put up off-shift and Mr. Shields contacted Security and asked them to take extra precautions in that interval between shifts. Mr. Shields did not observe any harassment of Clamant and he is aware only of that incident between Claimant and Mr. Rathbun. (TR 24-32)

John W. Chaffee, who has worked at the shipyard for thirty-four (34) years, the last twenty-seven years as a supervisor, and who currently is Electrical Superintendent, testified that Claimant is in his chain of command, that he interacts 2-3 times monthly with Claimant on union matters, that a steward's function is to police and enforce the collective bargaining agreement (CBA) but that it is management's prerogative to enforce company policy, that management has absolutely no say in the appointing, selection or removal of stewards, that IBEW stewards are appointed by the business agent, who currently is Steve Alger, and that he has dealt with Claimant a limited number of times, such as a discussion about an issue relating to the concept of "versatility" where Claimant felt that the electrical department was working employees outside their "core work." According to Mr. Chaffee, "we shouted and finally agreed that (Mr. Chaffee) would enforce the CBA and he would file a grievance," if necessary. (TR 33-56)

Claimant was unlike other stewards as he was "overly aggressive," "annoying" and specialized in "toe-to-toe intimidation." There was a "wide contrast between Claimant and

the other stewards, Mr. Chaffee remarking, “I like to treat people with dignity and respect and I hope to get it back.” Moreover, it is “awkward” at best to talk to Claimant and he is “very opinionated;” it is “my way or the highway” and the word “negotiation” is not in Claimant’s vocabulary. Mr. Chaffee also mentioned Jerry West, a steward who “turned in his button” and accepted a layoff, Mr. Chaffee testifying that Claimant, based on his seniority, could be asked in April of 1998 to transfer to second shift and not violate the CBA. Mr. Chaffee told Steve Alger that Claimant was “a liability” and “a problem” as to the way Claimant was perceived by others and Mr. Alger acknowledged Claimant was a problem but he took no action and he remained a steward until the tragic incident on November 30, 1998. (**Id.**)

“Super seniority” and layoffs have been issues of concern since the early 1990s due to cutbacks in the defense industry. There were 800 electricians at peak employment and currently there are 171 or 172 on active duty. To retain status as “super seniority” is a decision for each steward to make - - other stewards have turned in their buttons and accepted layoffs but Claimant had not done so prior to November 30, 1998 and his subsequent termination. Claimant told Mr. Chaffee about his problem with Mr. Rathbun by barging into his office and getting into his face, even though he (Mr. Chaffee) was busy with another matter. He went right away to locate Mr. Rathbun, told him about the complaint and advised him to “give Rick a wide berth” or you will be fired.” Mr. Rathbun was “upset” over the “super seniority” issue but he and Mr. Chaffee have worked together for seventeen years and he had no other problem with Mr. Rathbun during that time. (**Id.**)

According to Mr. Chaffee, the union election flyers are quite common and he could not recall any flyer directed at Claimant. Supervisors in the electrical shop are directed to take down the flyers “as we do not condone them” but other shops leave them up. Claimant never identified any person, other than Mr. Rathbun, as having harassed him. Claimant did tell Mr. Chaffee that he had talked to Mr. Poole about Mr. Rathbun and that he felt that he had received no satisfaction from Mr. Poole. According to Mr. Chaffee, flyers are not reported to the Security Department unless a worker felt offended by or uncomfortable with the flyer. (**Id.**)

Linda G. Gastiger, who has worked at the shipyard for fifteen years, the last eight years in labor relations and who currently serves as Manager of Labor Relations, testified that her duties involved, **inter alia**, monitoring the CBA, hearing grievances, enforcing discipline on hourly workers, etc., and that the management concept of “flexibility,” beginning with the 1991 CBA, is the ability of a person in one occupational title to do the work of another occupation in the same union. There

is no time limit on the amount of time a worker may spend in that category. On the other hand, "versatility," beginning with the 1998 CBA, is the ability of a worker in one occupation to do the work of the same occupation but in another union. There is, however, a limit of twelve weeks in this category. According to Ms. Gastiger, a steward's main function is to ensure that the company abides by the CBA and that workers' rights are protected but it is management's function to enforce company policy. The NLRB Act protects union stewards and the Employer has absolutely no say in the selection or removal of stewards, and if the Employer interferes with a steward, a grievance or an NLRB proceeding may result. (TR 56-76)

While Ms. Gastiger conceded that the position of a steward is a stressful position, she testified that the position is a voluntary position and a steward can resign at any time. According to Ms. Gastiger, Claimant is an "extremely difficult" person with whom to deal as he is "non-cooperative" and "very arrogant." She has "good rapport" with other stewards and Claimant's behavior is "atypical," especially as "his actions inflame" rather than "calm down" the situation. She was never concerned that Claimant would become violent but she did know from others that "super seniority" was an issue and she was afraid that others might become violent with the Claimant. (TR 77-88)

On July 21, 1997 Ms. Gastiger sent out a layoff list (RX 23) and that list contains Claimant's name. However, based on his seniority, he had "regression rights" to his former job; he exercised that right and his proposed September 19, 1997 layoff was not effectuated. Three weeks later his name came up on another layoff list but because he had "super seniority" status, he never was sent that letter advising that he would be laid-off on October 10, 1997. (RX 21, RX 22) Ms. Gastiger has never heard of an attempted suicide at the yard because of a layoff. If such an incident had occurred, she certainly would have been contacted. Decedent's death is the only violent act about which she knows because of a layoff. There are nine unions at the shipyard and RX 37 is a chart showing employment levels in the MTC (Metal Trade Council). She learned of the incident between Claimant and Mr. Rathbun and she immediately set up a meeting with Human Resources and the union to deal with it. The matter was resolved and the parties were satisfied with the outcome. Claimant could have filed a grievance for the alleged harassment by Mr. Rathbun and for Employer's alleged failure to take action but he did not do so. In 1997 Claimant applied for transfers to three jobs but he made no requests in 1998. Ms. Gastiger testified further that union flyers are quite common in the shipyard but they are not permitted by the Employer and supervision is directed to take them down as they belong in the union hall or outside the shipyard. She also recalled some

posters directed at management, such as herself, after the 1999 CBA. In 1995 the Employer instituted a program to encourage voluntary retirements by a so-called “golden handshake,” and about 200 workers took advantage of that program. (TR 88-95)

After each side completed their respective cases, Claimant gave additional testimony in rebuttal and he testified that during the 1998 election he was not a candidate for a union position during that election but two times before he had been elected to the union’s executive board. The flyers and posters in the shop contained only the beeper number of the stewards but, according to the Claimant, one of the flyers sent around the shipyard contained his home telephone number. Even though removed from the shipyard since November 30, 1998 Claimant still experiences stress, anxiety and panic attacks, and he also experiences shortness of breath anytime he has to go to Groton to his attorney’s office. He constantly dreams about Electric Boat and whenever he has to deal with a person like John Cahoon, now he just walks away. (TR 96-100)

Edward F. DeCosta, appearing on behalf of Claimant as a character witness, testified that he worked at the shipyard for thirty-three (33) years, that he served as President and Business Manager of Local 261, IBEW, that he dealt with Claimant on many occasions, that the primary duty of a union steward is to police the CBA and that Claimant was the union’s primary person on the CBA and insurance problems. According to Mr. DeCosta, some stewards are easy-going and others are aggressive, Mr. DeCosta remarking that he likes to see a steward who is aggressive, **i.e.**, someone who will follow through on matters and not one will take “No” for an answer. Claimant was good at fact-finding and organization. In 1997 and 1998 morale at the shipyard was low due to bad contracts and layoffs due to lack of work. Claimant’s “super seniority” status was an issue with certain union members. On many occasions Claimant complained to Mr. De Costa about the harassment he was experiencing and he often came to have lunch with him in the tool crib at least four days each week because the stress was taking its toll on the Claimant. (TR 100-109)

Mr. De Costa observed the incident between the Claimant and Mr. Rathbun as he and Claimant usually had their lunch in the tool crib. According to Mr. DeCosta, Claimant walked out of the tool crib and proceeded to the lockers about thirty (30) feet away, and Mr. De Costa heard someone yell out in the direction of Mr. Rathbun: “There’s the person stealing your job.” Mr. Rathbun then proceeded to yell out to Claimant and proceed towards the locker, all the while yelling, “you are stealing my job.” Both were nose-to-nose and Mr. DeCosta, who was about ten feet away, approached both and told them to stop that behavior or they would be fired. According to Mr. DeCosta, “Clearly, Mr.

Rathbun was the aggressor" but he did admit that both were screaming and yelling at each other. Mr. DeCosta was not invited to the IRD meeting but he saw them go into that meeting. Mr. DeCosta testified further that Claimant acted appropriately because he kept trying to walk away and Rathbun followed him until they were nose-to-nose. (TR 109-111)

Mr. DeCosta retired on June 8, 1998 and the union election took place sometime after that, and he believes the election took place the third week of June. He worked in the tool crib for several months prior to his retirement. He was union president from 1986 - 1989 and he appointed Claimant as a union steward sometime in the Fall of 1988 and after the end of the shipyard strike. He also served as a steward for a number of years and he resigned this position two or three months prior to his retirement. He admitted that he, Claimant and Mr. Alger were "allies" and friends. When he was asked what was it that Claimant said in response to Mr. Rathbun, he replied, "I'm not stealing you job. I have super seniority." According to Mr. DeCosta, Claimant and Mr. Rathbun were both visibly angry, but they each stayed away from each other after that incident and he heard of no further confrontations between them. (**Id.**)

The parties deposed Calvin E. Hopkins on March 29, 2000 (CX 36) and Mr. Hopkins, who had retired from the shipyard, testified that in 1998 he had worked at the shipyard as an outside electrician, in the material and tool crib, that he has served on the executive board of the union, that the issue of "super seniority" caused some controversy among certain employees after an employee with more seniority than the Claimant was laid-off and that some employees "started saying he (Claimant) should go he shouldn't be there," and the "more people that got laid off, the worse it got, the more people felt that way." According to Mr. Hopkins, Claimant's status became an issue in the election and Claimant's opponents began "saying nasty things about him and about the president" of the union. Mr. Hopkins recalled seeing the flyer with the boat on it and with Steve Alger, the president, and Claimant sitting in the boat, with the other stewards in the water. Mr. Hopkins was aware that Claimant's locker had been glued shut and that the atmosphere in the shipyard at that time was "very stressful on a lot of people." (CX 36 at 1-4, 7-8)

Mr. Hopkins saw Claimant on the same day just before he went to work on the day in question, **i.e.**, November 30, 1998. Claimant seemed alright and he told Claimant to be careful with Mr. Cahoon because "he's got a chip on his shoulder," on the basis of a conversation he (Mr. Hopkins) had with Mr. Cahoon about the Claimant and a person Mr. Cahoon called "Smitty," Mr. Hopkins remarking, "He (Mr. Cahoon) didn't seem to be in a good mood at all." (**Id.** at 4-7)

Mr. Hopkins admitted that he has known the Claimant ever since he (Claimant) began working at the shipyard, that they often socialized and occasionally rode to work together, that they had one beer on the afternoon of November 30, 1998 before reporting to work on the second shift, that "Smitty" was Quentin Smith and that he had also kept his job as others with more seniority were being laid-off, that he agreed with the concept of "super seniority" because it ensured longevity for the union officials and that a lot of the criticism was directed at the Claimant "because he had the least seniority" of all of the union stewards. (**Id.** at 9-18)

Medical Evidence

Dr. Walter A. Borden was deposed on January 11, 2000. (CX 28) Dr. Borden has been practicing psychiatry and forensic psychiatry since 1965. Dr. Borden met and took a history from Mr. Dorans which revealed that he had an alcoholic and abusive father, as well as problems with acceptance by his peers resulting from his move from Scotland when he was eight years old. This caused him to be very sensitive to a need for approval, in Dr. Borden's opinion. Dr. Borden stated that Claimant's desire to help people as a union steward was an example of his need for approval. Dr. Borden also described the severe psychiatric problems suffered by Claimant's wife and how that affected him. Claimant also experienced emotional trauma from the death of his mother who suffered from emphysema and heart disease for ten years before passing away. Mr. Dorans tried to deal with these problems by throwing himself into his work, according to Dr. Borden. Claimant also had problems because his sister began to care for their alcoholic father. However, this led his sister, who is schizophrenic, to alcoholism. (CX 28)

Dr. Borden opined that the problems resulting from Claimant's exercise of "super-seniority" rights and his grievance against Mr. Rathbun caused Claimant to lose the sense of approval he had from his position as a union steward. Dr. Borden's psychiatric diagnosis was of "chronic depression, anxiety disorder, and what I would term a mixed personalty (sic) disorder with avoidant obsessive compulsive and narcissistic features." (CX 28 at 11) Dr. Borden testified that the Claimant does not remember the actual incident with Mr. Cahoon, he only remembers Mr. Cahoon coming towards him in a threatening manner. Dr. Borden stated that this could be explained either by post-amnesia which occurs when someone does something so completely out of character they block it out or because of an emotional state called disassociation which means someone is not completely aware of what they are doing when they act. In Dr. Borden's opinion, it is more likely that Mr. Dorans was

experiencing the mental state of disassociation. This resulted from the alleged harassment Mr. Dorans experienced over the last several years and the lack of emotional resources because of his family problems. Dr. Borden stated that Claimant puts on a facade of normalcy even though he has deep underlying problems. Dr. Borden also opined that Mr. Dorans had a tendency to perceive a greater threat than really existed. Dr. Borden emphasized that the physical situation Mr. Dorans described on November 30th, with him seated against a wall and Mr. Cahoon walking towards him, caused him to feel a heightened threat. The problems Claimant has experienced since November 30, 1998, trouble sleeping and concentrating, were related to the stresses he suffered at work, in Dr. Borden's opinion. On cross examination, Dr. Borden stated that he reviewed medical records from Dr. Andrus and Partners in Psychotherapy, the Claimant's testimony and various investigative reports of the assault. Dr. Borden stated that his testing confirmed that Claimant is the type of person who is really out of touch and avoids his feelings. Dr. Borden felt that the extreme discrepancy in size between Claimant and Mr. Cahoon is an example of how Claimant would overreact to a situation and feel threatened. Dr. Borden testified that the incident on November 30, 1998 would be alien to Claimant's ego while previous physical altercations were not because his mental state had deteriorated by that time. (CX 28)

Dr. Borden admitted the possibility that Claimant may not have answered questions immediately after the incident because he did not want to make any admissions regarding his state of mind. Dr. Borden opined that the Claimant does have a psychological impairment, but retains the ability to work in the right setting. Dr. Borden stated that he gave the Claimant three psychological tests and that there are facets of the test which determine whether the test taker is giving truthful answers. Dr. Borden would not expect the Claimant to lose time from work as his condition worsened since he was so dependent on work. Dr. Borden understood that the reason he did miss time from work was because of his family's problems. (CX 28)

Dr. Borden, whose psychiatric evaluation is dated December 7, 1999 (CX 10), concluded that the "psychiatric diagnosis is chronic depression, anxiety disorder, and a mixed personality disorder with avoidant, obsessive/compulsive and narcissistic features. These problems are complex, long-standing, and pre-date the altercation of December 9, 1998. The principle (sic) issues underlying these psychiatric problems are the effects of a dysfunctional family of origin, father's alcoholism, an emotionally devastating divorce, unresolved grief, anticipatory grief and work stressors," according to the doctor. (**Id.**)

Dr. Mark Braverman was deposed on January 28, 2000. (CX 32) Dr. Braverman received a Ph.D. in psychology from Boston

University and has been a principal of CMG Associates for the past twelve years. Dr. Braverman and CMG Associates consult with companies to identify workplace conditions which cause stress, interfere with people's health or productivity. Dr. Braverman also assesses individuals who have had trouble at work because of stressors. Dr. Braverman opined that the main psychological stressors in the workplace are lack of control of working conditions and isolation and lack of social support. Loss of control usually results when one feels that the supervision is unfair or unresponsive. This causes feelings of isolation and helplessness. Depending on the individual, this can result in serious physical conditions such as cardiovascular disease, chronic pain and mental illness. (CX 32)

Dr. Braverman had a meeting with Electric Boat after his organization was approached by the safety committee to help with issues of workplace violence. There was concern of conflict between employees due to job loss. Dr. Braverman does not recall exactly what was proposed, but in general, it would entail reviewing the situation and then proposing new policies to anticipate the stressors and deal with them more effectively. Downsizing can have an enormous effect because employees who were once part of the same team are now competing for the remaining jobs. Any give backs by the employees in contract negotiations would worsen the situation because it would create a feeling of distrust between the union and its members. Dr. Braverman stated that he would need to know more about the particular situation between the union and its members because sometimes there is a good working relationship at the beginning and sometimes union members feel they are coerced into paying their dues. After hearing a description of the situation within the electrician's union, anticipated layoffs and the issue of "super seniority," Dr. Braverman opined that that would cause a tremendous amount of distrust and loss of credibility on the part of the union. (CX 32)

Dr. Braverman felt that Claimant's having to report a fellow worker for harassment was an excruciating conflict because it placed him against the people he was supposed to be helping. Dr. Braverman stated that with all the stressors Mr. Dorans was also undergoing relating to his family "it's hard for (him) to understand how this guy was still standing." (CX 32 at 26) Dr. Braverman stated that the situation at Electric Boat was a "classic" situation for producing an episode of uncontrolled violence. Dr. Braverman testified that in the incident with Mr. Cahoon, Mr. Dorans "snapped" and that "he was overwhelmed by his own emotional reaction and that he acted without thinking and without being able to stop himself from doing what he did." (CX 32 at 28) Dr. Braverman opined that the types of stressors Mr. Dorans was experiencing, both at home and at work, could cause anxiety and sleeplessness. Dr. Braverman stated that it would

be a typical for a person, particularly a male, to throw themselves into their work. Claimant's problems could have been particularly damaging because his self esteem was being stripped away. Dr. Braverman also agreed with Dr. Borden that Claimant experienced a dis-associative episode when he struck Mr. Cahoon. (CX 32)

On cross examination, Dr. Braverman defined workplace violence as anything from an actual assault to a workplace climate in which people feel threatened, intimidated or unsafe. Dr. Braverman has not reviewed any of the testimony of the percipient witnesses, but he did review Claimant's testimony. Dr. Braverman's knowledge of the situation at Electric Boat derived from his previous meeting and his review of the facts concerning this situation. Dr. Braverman stated that certain people can respond to stressors in very different ways. Dr. Braverman agreed that it is possible that Claimant is lying when he says he does not recall striking Mr. Cahoon, but that given the information at hand, it is also possible that he experienced a dis-associative state. Dr. Braverman did not read any information that described Mr. Dorans as a belligerent individual. (**Id.**)

Dr. George L. Andrus was deposed on March 3, 2000. (RX 45) Dr. Andrus has a Doctorate in Education, a Master's degree in social work and is Board-Certified. Dr. Andrus has been involved in an outpatient mental health clinic practice for seventeen years. Dr. Andrus' records indicate that there were three sessions involving Mr. Dorans beginning in August of 1997 and extending until August of 1999 when treatment was discontinued because of problems with his insurance. Dr. Andrus reviewed his notes from the sessions on August 18th, August 25th, September 8th, September 15th and September 29th of 1997. All the notes from the sessions indicate that Mr. Dorans discussed only problems relating to his divorce. Dr. Andrus described Claimant's relationship with his wife as co-dependent meaning that a person stays in a relationship even though it is detrimental because they are avoiding the pain of letting go. Dr. Andrus wrote a letter to Electric Boat at the behest of Mr. Dorans explaining that he is undergoing counseling to deal with his divorce and that he may need to take family leave at some point. When Dr. Andrus first saw the Claimant he performed an assessment and then set up treatment goals. Dr. Andrus explained that the treatment goals may be obtained by helping the patient recognize the problem and how to deal with it or by teaching coping skills or by clarifying whether Mr. Dorans truly wanted to reconcile with his wife or wanted a divorce. (RX 45)

Dr. Andrus reviewed the intake sheet of December 1, 1998 for Mr. Dorans. His symptoms were described as "very nervous, unable to concentrate, blackouts, unable to sleep." Another

section indicated that he had previously been seen for counseling regarding his divorce. The Client Assessment and Treatment Planning Form, also dated December 1, 1998, indicates that Mr. Dorans was being seen for job related problems. Dr. Andrus stated that December 1, 1998 was the first time Mr. Dorans was seen for problems stemming from his employment. That same form also indicates that the major complaint was that Mr. Dorans was upset after striking another employee at work, described the "super seniority" issue and that Mr. Dorans has been harassed by other employees for six months and the company has not stopped it. The form also indicates that Mr. Dorans is going through a contested divorce. Dr. Andrus diagnosed Mr. Dorans with acute stress disorder. Dr. Andrus described Axis IV, the stressors in Claimant's life, as "job problems, financial problems and legal problems." Dr. Andrus gave Mr. Dorans a mark of 55 out of 100 on the global functioning scale. Dr. Abdrus testified that Mr. Dorans described the incident of November 30, 1998 in general terms. Mr. Dorans told Dr. Andrus that his "super seniority" status was causing him to be harassed at work and that the company was not doing anything about it. Dr. Andrus stated that that led up to the incident in question. He stated, "(h)e told me that - my best recollection again know (sic) - that the word was around that he was going to try to get him. And that, I guess, several things were done to his locker. I don't remember the specific details. But anyway, he was in an open space or whatever and this person was harassing him and hit him, turned and hit him, and the fellow hit the floor and that he had died from this incident." (RX 45 at 38) Dr. Andrus stated that he diagnosed acute stress disorder which was caused by the incident at work of November 30, 1998. Dr. Andrus testified that he did not see any evidence that Mr. Dorans was incapable of understanding what was going on around him on November 30, 1998. On redirect examination, Dr. Andrus testified that he primarily saw Mr. Dorans in his role as a family counselor. On recross examination, Dr. Andrus stated that there was no discussion of job stressors with Mr. Dorans prior to December 1, 1998.

The parties deposed Muriel S. Flanzbaum (CX 37) and Ms. Flanzbaum, who has "worked eighteen years at Kent County Hospital as the social worker and clinical supervisor," now works part-time as Partners in Psychotherapy and that the initials after her name, ACSW, mean "Academy of Certified Social Workers" and is obtained after passing an examination two years after obtaining your degree. Ms. Flanzbaum further testified that she first met Claimant on September 7, 1999, that that was his first visit to the facility, that Dr. Andrus provided some "very meager" records to her and that Claimant was in treatment "(b)ecause of events that transpired at work that caused him to lose his job of sixteen years and his anxiety level was very high." Ms. Flanzbaum admitted that she has seen no records

showing that Claimant had reported or been treated for any psychological problems prior to November of 1998, that Claimant was working full-time when she saw Claimant on September 7, 1999, that he had no impairment to his ability to keep working and that he has continued to keep working for as long as she was counseling him and that she is the only person at her facility treating Claimant. (CX 37 at 1-14, CX 23)

On the basis of the totality of the record and having observed the demeanor and having heard the testimony of credible witnesses, except as specifically discussed below, this Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Section 3(c)

Section 20(d) of the Act presumes that an injury was not occasioned by the injured employee's "willful intention" to injure or kill himself or another. However, this presumption will fall out of the case under the "bursting bubble" theory of presumptions if the employer presents substantial evidence that the claimant possessed the requisite "willful intent." Once such evidence is produced, the presumption disappears and no longer controls the outcome of the case; however, the presumption is not, in and of itself, affirmative evidence. **Del Vecchio v. Bowers**, 296 U.S. 280 (1935).

The significance of whether a claimant possessed the "willful intent" to injure or kill himself or another is apparent in light of Section 3(c) of the Act which provides:

> No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another. 33 U.S.C. §§903(c).

In the present case, the Section 20(d) presumption attaches to the circumstances relating to the incident of November 30, 1998 in which, as extensively summarized above, Mr. Dorans struck Mr. Cahoon. In order for Employer to utilize the Section 3(c) bar as a defense to the claim for compensation, it bears the burden of presenting substantial evidence that Claimant possessed the willful intent to injure Mr. Cahoon.

The presence or absence of Claimant's "willful intent" to injure Mr. Cahoon must be determined based on the Claimant's speech and physical activity including any threatening gestures or touching at the time of the incident. **Kielczewski v. The Washington Post Company**, 8 BRBS 428 (1978); **Rogers v. Dalton**

Steamship Corp., 7 BRBS 207 (1977). The administrative law judge in **Wilburn v. Ceres Terminals**, 26 BRBS 660 (ALJ)(1993) relied on the following definitions in deciding a case involving an altercation between co-workers:

> An employee exhibits willful intent to injure when the act is committed knowingly and purposefully. 'A willful act may be described as one done intentionally, knowingly, and purposefully, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.' Black's Law Dictionary 1434 (5th Ed. 1979). Furthermore, 'A willful act differs essentially from a negligent act. The one is positive, and the other is negative.' **Id.** According to the Supreme Court, the term 'willful' 'often denotes an act which is intentional, or knowing, or voluntary as distinguished from accidental.' **United States v. Murdock**, 290 U.S. 389, 394 (1933). The Court added that 'the word is also employed to characterize a thing done without ground for believing it is lawful or conduct marked by careless disregard whether or not one has a right so to act.'" **Id.** at 394-95.

The evidence in this case overwhelmingly supports the conclusion that the Claimant formed a willful intention to injure Mr. Cahoon when he struck him twice on November 30, 1998. Eight (8) percipient witnesses testified to fundamentally the same set of facts. Specifically, Claimant was seated at a table in the shop at the conclusion of the lunch break on the second shift on November 30, 1998. He was engaged in a conversation regarding the status of Ray Marrone, a former management level employee who had been regressed to working leader, according to Robert Leonard and Ronald Poole. Mr. Cahoon entered the shop and made a comment to Claimant that he had no place criticizing Mr. Marrone because of his use of "super-seniority" status to avoid a layoff. This angered Claimant who responded by getting out of his chair and twice striking Mr. Cahoon before he was stopped by Mr. Poole. This incident led to Claimant's dismissal from Electric Boat.

All of the witnesses characterized the incident as an attack. None of the witnesses testified that Mr. Cahoon was acting in a threatening manner towards Claimant. Claimant told several of his mental health caretakers that he had heard of prior incidents in which Mr. Cahoon had thrown a tool bag across the shop and had thrown a pry bar at Chris Stewart so he felt threatened when Mr. Cahoon approached him. Those statements were explicitly contradicted by the percipient witnesses who had never heard of the incidents as described by Mr. Dorans.

Specifically, Edward Wilson, Lyn Tyrone, Robert Leonard and Ronald Poole testified credibly that they had never heard of the incidents described by Mr. Dorans. Moreover, Lyn Tyrone, Robert Leonard and Ronald Poole stated that Mr. Cahoon was not an "in your face" type of person, as self-servingly described by Mr. Dorans.

Mr. Cahoon was placed by the witnesses at the end of a row of lockers depicted in RX 29 while Mr. Dorans was seated in a chair depicted in RX 30. The distance between them was described as anywhere from three or four feet to ten feet. Lyn Tyrone testified that Mr. Cahoon may have been walking past Mr. Dorans when the attack was launched. Ronald Poole testified that Mr. Cahoon may have begun to walk past Mr. Dorans as he was putting his hard hat back on to return to work. However, all of the witnesses, including the two mentioned immediately above, concurred that Mr. Cahoon was not acting in any kind of threatening manner towards the Claimant, and I find their testimony to be credible.

Several of the witnesses, Edward Wilson, Michael Zaccaria and Robert Wayne Perkins, testified that Mr. Dorans made a comment to the effect of, "You don't think I'll hit you?" before getting out of his chair and striking Mr. Cahoon. The witnesses credibly testified that Mr. Dorans hit Mr. Cahoon with all of his might. The witnesses also testified that it appeared Mr. Dorans was going to hit Mr. Cahoon a third time when Mr. Poole intervened. After striking Mr. Cahoon, Mr. Dorans commented, "I hope you learned a lesson," according to Lyn Tyrone, Michael Zaccaria and Robert Wayne Perkins.

The facts as described above are only contradicted by Claimant's self serving comments to Dr. Borden which I find incredible. The fact that Mr. Dorans sprang from his chair and struck Mr. Cahoon twice and may have struck him a third time, if not for the intervention of Mr. Poole, is more than sufficient for this Administrative Law Judge to find that the Claimant formed the willful intention to injure Mr. Cahoon. As such, any psychological injuries which may have resulted from Claimant's reaction to the incident are barred by Section 3(c). Likewise, any psychological injuries which may have resulted from the Employer's subsequent termination of the Claimant are barred as a legitimate personnel action. In this regard, **see Marino v. Navy Exchange**, 20 BRBS 166 (1988).

Accordingly, in view of the foregoing, I find and conclude that the claim filed by the Claimant shall be, and the same hereby is **DENIED** because the November 30, 1998 attack on John Cahoon is proscribed by the provisions of Section 3(e) of the Act because of the willful, conscious and intentional action of

the Claimant and because his conduct fits within the letter and spirit of that section.

As it has been determined that any psychological injuries resulting from the incident of November 30, 1998 are not compensable, Claimant now has the burden of showing that the alleged incidents of harassment, which Claimant alleges occurred prior to that date, were the cause of his current condition. If Claimant is not able to make this showing, his claim for compensation must be denied for this additional reason. I will now undertake to examine the remainder of the record to determine if Claimant has been successful.

This Administrative Law Judge, in arriving at a decision in this matter, is entitled to determine the credibility of the witnesses, to weigh the evidence and draw his own inferences from it, and he is not bound to accept the opinion or theory of any particular medical examiner. **Banks v. Chicago Grain Trimmers Association, Inc.**, 390 U.S. 459 (1968), **reh. denied**, 391 U.S. 929 (1969); **Todd Shipyards v. Donovan**, 300 F.2d 741 (5th Cir. 1962); **Scott v. Tug Mate, Incorporated**, 22 BRBS 164, 165, 167 (1989); **Hite v. Dresser Guiberson Pumping**, 22 BRBS 87, 91 (1989); **Anderson v. Todd Shipyard Corp.**, 22 BRBS 20, 22 (1989); **Hughes v. Bethlehem Steel Corp.**, 17 BRBS 153 (1985); **Seaman v. Jacksonville Shipyard, Inc.**, 14 BRBS 148.9 (1981); **Brandt v. Avondale Shipyards, Inc.**, 8 BRBS 698 (1978); **Sargent v. Matson Terminal, Inc.**, 8 BRBS 564 (1978).

The Act provides a presumption that a claim comes within its provisions. **See** 33 U.S.C. §920(a). This Section 20 presumption "applies as much to the nexus between an employee's malady and his employment activities as it does to any other aspect of a claim." **Swinton v. J. Frank Kelly, Inc.**, 554 F.2d 1075 (D.C. Cir. 1976), **cert. denied**, 429 U.S. 820 (1976). An employee’s uncontradicted credible testimony alone may constitute sufficient proof of physical injury. **Golden v. Eller & Co.**, 8 BRBS 846 (1978), **aff'd**, 620 F.2d 71 (5th Cir. 1980); **Hampton v. Bethlehem Steel Corp.**, 24 BRBS 141 (1990); **Anderson v. Todd Shipyards**, **supra**, at 21; **Miranda v. Excavation Construction, Inc.**, 13 BRBS 882 (1981).

However, this statutory presumption does not dispense with the requirement that a claim of injury must be made in the first instance, nor is it a substitute for the testimony necessary to establish a "**prima facie**" case. The Supreme Court has held that “[a] **prima facie** ‘claim for compensation,’ to which the statutory presumption refers, must at least allege an injury that arose in the course of employment as well as out of employment." **United States Indus./Fed. Sheet Metal, Inc., v. Director, Office of Workers' Compensation Programs, U.S. Dep’t**

of Labor, 455 U.S. 608, 615 102 S. Ct. 1318, 14 BRBS 631, 633 (CRT) (1982), **rev'g Riley v. U.S. Indus./Fed. Sheet Metal, Inc.**, 627 F.2d 455 (D.C. Cir. 1980). Moreover, "the mere existence of a physical impairment is plainly insufficient to shift the burden of proof to the employer." **Id**. The presumption, though, is applicable once claimant establishes that he has sustained an injury, **i.e.**, harm to his body. **Preziosi v. Controlled Industries**, 22 BRBS 468, 470 (1989); **Brown v. Pacific Dry Dock Industries**, 22 BRBS 284, 285 (1989); **Trask v. Lockheed Shipbuilding and Construction Company**, 17 BRBS 56, 59 (1985); **Kelaita v. Triple A. Machine Shop**, 13 BRBS 326 (1981).

To establish a **prima facie** claim for compensation, a claimant need not affirmatively establish a connection between work and harm. Rather, a claimant has the burden of establishing only that (1) the claimant sustained physical harm or pain and (2) an accident occurred in the course of employment, or conditions existed at work, which could have caused the harm or pain. **Kier v. Bethlehem Steel Corp.**, 16 BRBS 128 (1984); **Kelaita**, **supra**. Once this **prima facie** case is established, a presumption is created under Section 20(a) that the employee's injury or death arose out of employment. To rebut the presumption, the party opposing entitlement must present substantial evidence proving the absence of or severing the connection between such harm and employment or working conditions. **Parsons Corp. of California v. Director, OWCP**, 619 F.2d 38 (9th Cir. 1980); **Butler v. District Parking Management Co.**, 363 F.2d 682 (D.C. Cir. 1966); **Ranks v. Bath Iron Works Corp.**, 22 BRBS 301, 305 (1989); **Kier**, **supra**. Once claimant establishes a physical harm and working conditions which could have caused or aggravated the harm or pain the burden shifts to the employer to establish that claimant's condition was not caused or aggravated by his employment. **Brown v. Pacific Dry Dock**, 22 BRBS 284 (1989); **Rajotte v. General Dynamics Corp.**, 18 BRBS 85 (1986). If the presumption is rebutted, it no longer controls and the record as a whole must be evaluated to determine the issue of causation. **Del Vecchio v. Bowers**, 296 U.S. 280 (1935); **Volpe v. Northeast Marine Terminals**, 671 F.2d 697 (2d Cir. 1981); **Holmes v. Universal Maritime Serv. Corp.**, 29 BRBS 18 (1995). In such cases, I must weigh all of the evidence relevant to the causation issue. **Sprague v. Director, OWCP**, 688 F.2d 862 (1st Cir. 1982); **Holmes, supra**; **MacDonald v. Trailer Marine Transport Corp.**, 18 BRBS 259 (1986).

The Section 20(a) presumption is applicable in psychological injury cases. **Cotton v. Newport News Shipbuilding & Dry Dock Co.**, 23 BRBS 380, 384 n.2 (1990). Thus, Claimant’s psychological injury need only be due in part to work-related conditions to be compensable under the Act. **See Peterson v.**

General Dynamics Corp., 25 BRBS 78 (1991), **aff'd sub nom. Ins. Co., of North America v. U.S. Dept. of Labor**, OWCP, 969 F.2d 1400, 26 BRBS 14 (CRT)(2d Cir. 1992), cert. denied, 507 U.S. 909 (1993).

The Board has consistently held that work related psychological impairments, including depression, can constitute compensable injuries under the Act. **Turner v. Chesapeake & Potomac Tel. Co.**, 16 BRBS. 255 (1984). **See also Moss v. Norfolk Shipbuilding & Dry Dock Corp.**, 10 BRBS. 428 (1979); **Spence v. ARA Food Serv.**, 13 BRBS. 635 (1980); **Dygert v. Manufacturer's Packaging Co.**, 10 BRBS. 1036, 1043-1044 (1979). Claimant bears the burden of proving that she suffered or suffers from such a psychological impairment, and the existence of work conditions which could have caused that impairment. **Sanders v. Alabama Dry Dock and Ship-building Co.**, 22 BRBS. 340 (1989). **See generally Kelaita v. Triple A Machine Shop**, 13 BRBS. 326 (1981), **aff'd sub nom.**; **Kelaita v. Director, OWCP**, 799 F.2d 1308 (9th Cir. 1986) **Kier v. Bethlehem Steel Corp.**, 16 BRBS. 128 (1984). Such proof establishes a prima facie case, and invokes the section 20(a) presumption that the psychological impairment was caused by work activities. **See also Pietrunti v. Director, OWCP**, 119 F.3d 1035, 31 BRBS 89 (CRT)(2d Cir. 1997).

In the case **sub judice**, Claimant alleges that his psychological injuries arose from the harassment he suffered at various times while employed at the Employer's shipyard. Specifically, Claimant argues that the confrontations with John Rathbun which led him to file an IRM, the presentation of the letter requesting his removal as a union steward, posters listing his home telephone number, harassing telephone calls to his home, vandalism of his locker and being threatened to be hit with a two by four led to his current anxiety attacks, insomnia and need for psychological counseling.

On the other hand, the Employer contends that Claimant did not establish a **prima facie** case of causation and, in the alternative, that there is substantial evidence of record to rebut the Section 20(a) presumption.

The presumption of causation can be rebutted only by "substantial evidence to the contrary" offered by the employer, **i.e.**, substantial evidence which establishes that claimant's employment did not cause, contribute to or aggravate his condition. **See Peterson v. General Dynamics Corp.**, 25 BRBS 71 (1991), **aff'd sub nom. Insurance Company of North America v. U.S. Dept. of Labor**, 969 F. 2d 1400, 26 BRBS 14 (CRT)(2d Cir. 1992), **cert. denied**, 507 U.S. 909, 113 S. Ct. 1264 (1993); **Obert v. John T. Clark and Son of Maryland**, 23 BRBS 157 (1990);

Sam v. Loffland Brothers Co., 19 BRBS 228 (1987). This requires that the employer offer evidence which completely **rules out the** connection between the alleged event and the alleged harm. In **Caudill v. Sea Tac Alaska Shipbuilding**, 25 BRBS 92 (1991), the carrier offered a medical expert who testified that an employment injury did not "play a significant role" in contributing to the back trouble at issue in this case. The Board held such evidence insufficient as a matter of law to rebut the presumption because the testimony did not completely rule out the role of the employment injury in contributing to the back injury. **See also Cairns v. Matson Terminals, Inc.**, 21 BRBS 299 (1988) (medical expert opinion which did entirely attribute the employee's condition to non-work-related factors was nonetheless insufficient to rebut the presumption where the expert equivocated somewhat on causation elsewhere in his testimony). Where the employer/carrier can offer testimony which completely severs the causal link, the presumption is rebutted. **See Phillips v. Newport News Shipbuilding & Dry Dock Co.**, 22 BRBS 94 (1988) (medical testimony that claimant's pulmonary problems are consistent with cigarette smoking rather than asbestos exposure sufficient to rebut the presumption).

For the most part only medical testimony can rebut the Section 20(a) presumption. **But see Brown v. Pacific Dry Dock**, 22 BRBS 284 (1989) (holding that asbestosis causation was not established where the employer demonstrated that 99% of its asbestos was removed prior to the claimant's employment while the remaining 1% was in an area far removed from the claimant and removed shortly after his employment began). Factual issues come in to play only in the employee's establishment of the **prima facie** elements of harm/possible causation and in the later factual determination once the Section 20(a) presumption passes out of the case.

While I find Claimant's evidence is sufficient to invoke the Section 20(a) presumption, the Employer has produced substantial evidence to rebut it. Employer offered probative and persuasive evidence that the Claimant never complained of harassment at work, other than that remote incident with John Rathbun, nor was he treated for any alleged psychological problems prior to the incident of November 30, 1998. This was despite the fact that Claimant treated with numerous psychological health practicioners while undergoing treatment related to his divorce and other family problems.

As noted above, there simply is no credible contemporaneous medical or psychological evidence prior to the incident on November 30, 1998 wherein Claimant reports to a physician, psychiatrist, psychologist or social worker that his alleged work-related stress was affecting his life or work in any way. That evidence has been extensively summarized above and leads

ineluctably to the conclusion that Claimant's alleged psychological problems, due to work-related stress, simply did not exist prior to November 30, 1998, and that any psychological problems were due to other factors, such as his marriage, separation and divorce, the death of his mother and other family and sibling problems.

While Dr. Borden and Dr. Braverman stated that Claimant's alleged stress at work caused his psychological problems, those opinions are based on an inaccurate history report by Claimant as to the etiology of his problems prior to November 30, 1998. Moreover, while Dr. Andrus rendered a similar opinion on page 51 of his March 3, 2000 deposition (RX 45), the doctor's contemporaneous medical reports do not support that opinion because while Claimant went with his wife to see Dr. Andrus as part of so-called couples marital counseling, Claimant did not attribute, prior to November 30, 1998, any of his problems to his alleged stress at work.

Furthermore, I note that Muriel S. Flanzbaum, ACSW, remarked at her deposition (CX 37) that she was surprised at the "very meager" records sent to her by Dr. Andrus after Claimant was forced to stop seeing Dr. Andrus and switch to Ms. Flanzbaum as a result of a change in health insurance plans. It is obvious that those "very meager" records refer to the joint counseling sessions and not the individual's sessions of Claimant's now ex-wife. Thus, Ms. Flanzbaum's opinions, as expressed in her December 21, 1999 report (CX 23) and her deposition (CX 37) are entitled to little or no weight for the following reasons: (1) She did not see Claimant until September 7, 1999. (2) Her opinion is based on an inaccurate history report and (3) "very meager" records.

Based upon the foregoing, I find and conclude that Employer has successfully rebutted the Section 20(a) presumption.

If rebutted, the presumption itself passes completely out of the case and the issue of causation is determined by examining the record "as a whole". **Holmes v. Universal Maritime Services Corp.**, 29 BRBS 18 (1995). In such cases, I must weigh all of the evidence relevant to the causation issue. **Sprague v. Director, OWCP**, 688 F. 2d 862 (1st Cir 1982); **Holmes, supra**; **MacDonald v. Trailer Marine Transport Corp.**, 18 BRBS 259 (1986). Prior to 1994, the "true doubt" rule governed the resolution of all evidentiary disputes under the Act; where the evidence was in equipoise, all factual determinations were resolved in favor of the injured employee. **Young & Co. v. Shea**, 397 F.2d 185, 188 (5th Cir. 1968), **cert. denied,** 395 U.S. 920, 89 S. Ct. 1771 (1969). The Supreme Court held in 1994 that the "true doubt" rule violated the Administrative Procedure Act, the general statute governing all administrative bodies. **Director,**

OWCP v. Greenwich Collieries, 512 U.S. 267, 114 S. Ct. 2251, 28 BRBS 43 (CRT) (1994). Accordingly, after **Greenwich Collieries** the employee bears the burden of proving causation by a preponderance of the evidence after the presumption is rebutted.

As found above, it is this Administrative Law Judge's conclusion that the evidence does not establish that the Claimant's alleged psychological condition was caused by working conditions prior to the incident of November 30, 1998. As was discussed above, Claimant cannot rely on the ramifications of the incident of November 30, 1998 because his claim would then be barred by Section 3(c). As a result, Claimant is limited only to any event prior to that date in arguing that the various acts of harassment leading up to that date resulted in his psychological injuries. Claimant cannot carry this burden, as shall now be discussed.

As found above, Claimant never made mention of any harassment at work until after the incident despite numerous meetings with Dr. Andrus. Dr. Andrus' notes are completely absent of any mention of harassment at work prior to November 30, 1998. Claimant testified that he was forced to take family and medical leave due to the results of the harassment from work, yet Dr. Andrus testified that he wrote a letter to Electric Boat at Claimant's behest explaining that he might have to take leave because of problems stemming from his divorce. This leads to the conclusion that the harassment or alleged harassment, if it existed at all, was not severe enough to warrant any comments. If the harassment were not severe enough for the Claimant to mention it, it is reasonable to conclude that it was not severe enough to cause his current psychological problems, and I so find and conclude.

Moreover, Claimant's testimony and the facts he related to Dr. Borden are largely incredible and self-serving. Dr. Borden was told that Mr. Cahoon was walking towards Mr. Dorans in a threatening manner. This version of the facts was explicitly contradicted by all of the eyewitnesses. Therefore, I cannot lend much weight to Dr. Borden's diagnosis as it appears it is based on an inaccurate history as provided by Claimant. As noted above, I have given little weight to the opinions of Dr. Braverman and Ms. Flanzbaum, ACSW, LICSW, for the reasons expressed above.

Nor can Claimant rely on his confrontation with Mr. Rathbun as I find and conclude that that incident, well over one year prior to November 30, 1998, was properly reported by Claimant on the IRM, and was properly handled by the Employer at a meeting, and there were no further repercussions between Claimant and Mr. Rathbun.

That is the only specific act of harassment prior to November 30, 1998, to which Claimant can point, and, as found above, the Employer has properly handled that situation.

Attorney's Fee

As Claimant's attorney did not successfully prosecute this matter, he is not entitled to a fee herein.

Conclusion

The facts of this case have led Claimant into an inescapable conundrum. It appears as though Claimant may be experiencing serious psychological problems. These problems stem from the difficulties he has experienced in his private life as well as the legal ramifications of the incident of November 30, 1998. However, as the evidence shows that Claimant formed a willful intention to injure Mr. Cahoon on November 30, 1998, he may not rely on that incident in bringing his claim. Without being able to rely on that incident, the evidence is insufficient to show there were any conditions at work which caused his psychological injury, as Claimant has not sustained his burden in this regard.

ORDER

As the Claimant has failed to show that the harassment he experienced at work were the cause of his psychological problems, his claim for benefits is hereby **DENIED.**

DAVID W. DI NARDI
Administrative Law Judge

Date:

Boston, Massachusetts
DWD:jl